
SUBSTITUTE SENATE BILL 5722

AS AMENDED BY THE HOUSE

Passed Legislature - 2022 Regular Session

State of Washington

67th Legislature

2022 Regular Session

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

READ FIRST TIME 02/03/22.

1 AN ACT Relating to reducing greenhouse gas emissions in
2 buildings; amending RCW 19.27A.200, 19.27A.220, 19.27A.230, and
3 19.27A.240; adding a new section to chapter 19.27A RCW; creating new
4 sections; 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 the previous year to~~
25 ~~making an application for an incentive under RCW 19.27A.220))~~ that is
26 representative of energy use in a normal weather year.

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

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

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

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

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

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

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

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

11 (10) "Electric utility" means a consumer-owned electric utility
12 or an investor-owned electric utility.

13 (11) "Eligible building owner" means: (a) The owner of a covered
14 ((commercial)) building required to comply with the standard
15 established in RCW 19.27A.210; or (b) ((the owner of a multifamily
16 residential building where the floor area exceeds fifty thousand
17 gross square feet, excluding the parking garage area)) all eligible
18 tier 2 covered building owners.

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

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

32 (14) "Energy use intensity target" means the target for net
33 energy use intensity of a covered ((commercial)) building ((that has
34 been established for the purposes of complying with the standard
35 established under RCW 19.27A.210)).

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

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

3 (17) (a) "Gross floor area" means the total number of square feet
4 measured between the exterior surfaces of the enclosing fixed walls
5 of a building, including all supporting functions such as offices,
6 lobbies, restrooms, equipment storage areas, mechanical rooms, break
7 rooms, and elevator shafts.

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

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

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

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

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

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

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

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

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

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

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

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.27A
15 RCW to read as follows:

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

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

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

1 houses of worship. The department shall prioritize underresourced
2 buildings with a high energy use per square foot, buildings in rural
3 communities, buildings whose tenants are primarily small businesses,
4 and buildings located in high-risk communities according to the
5 department of health's environmental health disparities map.

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

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

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

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

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

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

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

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

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

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

9 (iv) The rules may not take effect before the end of the 2031
10 regular legislative session.

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

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

15 (1) The department must establish a state energy performance
16 standard early adoption incentive program consistent with the
17 requirements of this section. This early adoption incentive program
18 may include incentive payments for early adoption of tier 2 covered
19 building owner requirements as described in subsection (6) of this
20 section.

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

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

36 (4) ((An eligible)) A covered building owner may receive an
37 incentive payment in the amounts specified in subsection ((+6))
38 (8)(a) of 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 or multifamily residential building is participating in the
12 incentive program by administering incentive payments as provided in
13 RCW 19.27A.240; and

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

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

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

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

28 ~~((iii))~~ (c) For a building with more than ~~((fifty thousand))~~
29 50,000 gross square feet but less than ~~((ninety thousand and one))~~
30 90,001 gross square feet, beginning July 1, 2021, through June 1,
31 2027.

32 ~~((b))~~ (6) (a) A tier 2 covered building owner may receive an
33 incentive payment in the amounts specified in subsection (8) (b) of
34 this section only if all required benchmarking, energy management,
35 and operations and maintenance planning documentation as required
36 under section 3 of this act has been submitted to the department and
37 an incentive application has been completed.

38 ~~((b))~~ (b) An eligible tier 2 covered building owner may submit an
39 application beginning July 1, 2025, through June 1, 2030.

1 (7) The department must review each application and determine
2 whether the applicant is eligible for the incentive program and if
3 funds are available for the incentive payment within the limitation
4 established in RCW 19.27A.230. If the department certifies an
5 application, it must provide verification to the building owner and
6 each entity participating as provided in RCW 19.27A.240 and providing
7 service to the building owner.

8 ((6) ~~An eligible building owner~~) (8)(a) An eligible owner of a
9 tier 1 covered building or an eligible owner of a multifamily
10 residential building greater than 50,000 gross square feet, excluding
11 the parking area, that demonstrates early compliance with the
12 applicable energy use intensity target under the standard established
13 under RCW 19.27A.210 may receive a base incentive payment of
14 ((eighty-five)) 85 cents per gross square foot of floor area,
15 excluding parking, unconditioned, or semiconditioned spaces.

16 ((7)) (b) A tier 2 eligible building owner that demonstrates
17 compliance with the applicable benchmarking, energy management, and
18 operations and maintenance planning requirements may receive a base
19 incentive payment of 30 cents per gross square foot of floor area,
20 excluding parking, unconditioned, or semiconditioned spaces. The
21 department may implement a tiered incentive structure for upgrading
22 multifamily buildings to provide an enhanced incentive payment to
23 multifamily building owners willing to commit to antidisplacement
24 provisions.

25 (9) The incentives provided in subsection ((6)) (8) of this
26 section are subject to the limitations and requirements of this
27 section, including any rules or procedures implementing this section.

28 ((8)) (10) The department must establish requirements for the
29 verification of energy consumption by the building owner and each
30 participating electric utility, gas company, and thermal energy
31 company.

32 ((9)) (11) The department must provide an administrative
33 process for an eligible building owner to appeal a determination of
34 an incentive eligibility or amount.

35 ((10)) (12) By September 30, 2025, and every two years
36 thereafter, the department must report to the appropriate committees
37 of the legislature on the results of the incentive program under this
38 section and may provide recommendations to improve the effectiveness
39 of the program. The 2025 report to the legislature must include
40 recommendations for aligning the incentive program established under

1 this section consistent with a goal of reducing greenhouse gas
2 emissions from substitutes, as defined in RCW 70A.60.010.

3 ((11)) (13) The department may adopt rules to implement this
4 section.

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

7 (1) The department may not issue a certification for ((an)) a
8 tier 1 incentive application under RCW 19.27A.220(8)(a) if doing so
9 is likely to result in total incentive payments under RCW
10 19.27A.220(8)(a) in excess of ((seventy-five million dollars))
11 \$75,000,000.

12 (2) The department may not issue certification for a tier 2
13 incentive application under RCW 19.27A.220(8)(b) if doing so is
14 likely to result in total incentive payments under RCW
15 19.27A.220(8)(b) in excess of \$150,000,000.

16 **Sec. 6.** RCW 19.27A.240 and 2019 c 285 s 6 are each amended to
17 read as follows:

18 (1) (a) Each qualifying utility must administer incentive payments
19 for the state energy performance standard early adoption incentive
20 program established in RCW 19.27A.220 on behalf of its customers who
21 are eligible building owners of covered commercial buildings ((or)),
22 multifamily residential buildings, or other tier 2 covered buildings
23 consistent with the requirements of this section. Any thermal energy
24 company, electric utility, or gas company not otherwise required to
25 administer incentive payments may voluntarily participate by
26 providing notice to the department in a form and manner prescribed by
27 the department.

28 (b) Nothing in this subsection (1) requires a qualifying utility
29 to administer incentive payments for the state energy performance
30 standard early adoption incentive program established in RCW
31 19.27A.220 for which the qualifying utility is not allowed a credit
32 against taxes due under this chapter, as described in RCW 82.16.185.

33 (2) An entity that administers the payments for the incentive
34 program under this section must administer the program in a manner
35 that is consistent with the standard established and any rules
36 adopted by the department under RCW 19.27A.210 ((and)), 19.27A.220,
37 and section 3 of this act.

1 (3) Upon receiving notification from the department that a
2 building owner has qualified for an incentive payment, each entity
3 that administers incentive payments under this section must make
4 incentive payments to its customers who are eligible building owners
5 of covered commercial buildings or multifamily residential buildings
6 who qualify as provided under this section and at rates specified in
7 RCW 19.27A.220((+6)) (8). When a building is served by more than one
8 entity administering incentive payments, incentive payments must be
9 proportional to the energy use intensity reduction of the
10 participating entities' fuel.

11 (4) The participation by an entity in the administration of
12 incentive payments under this section does not relieve the entity of
13 any obligation that may otherwise exist or be established to provide
14 customer energy efficiency programs or incentives.

15 (5) An entity that administers the payments for the incentive
16 program under this section is not liable for excess payments made in
17 reliance on amounts reported by the department as due and payable as
18 provided under RCW 19.27A.220, if such amounts are later found to be
19 abnormal or inaccurate due to no fault of the business.

20 NEW SECTION. **Sec. 7.** If specific funding for the purposes of
21 this act, referencing this act by bill or chapter number, is not
22 provided by June 30, 2022, in the omnibus appropriations act, this
23 act is null and void.

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