

# HOUSE BILL REPORT

## E2SSB 5854

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**As Reported by House Committee On:**  
Technology, Energy & Communications  
General Government Appropriations

**Title:** An act relating to reducing climate pollution in the built environment.

**Brief Description:** Reducing climate pollution in the built environment.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Kilmer, Pridemore, Ranker, Rockefeller, Marr, Fraser, Kohl-Welles, Kline, Murray and Keiser).

**Brief History:**

**Committee Activity:**

Technology, Energy & Communications: 3/18/09, 3/19/09, 3/23/09 [DPA];  
General Government Appropriations: 4/1/09, 4/3/09 [DPA(APPG w/o TEC)].

**Brief Summary of Engrossed Second Substitute Bill  
(As Amended by House)**

- Establishes performance standards, benchmarking, and other reporting requirements for public buildings.
- Requires utilities to record and upload energy consumption data for public buildings and non-residential buildings.
- Provides that residential and non-residential construction permitted under the 2031 State Energy Code must achieve a 70 percent reduction in annual net energy consumption, using the 2006 State Energy Code as a baseline.

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### HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

**Majority Report:** Do pass as amended. Signed by 10 members: Representatives McCoy, Chair; Carlyle, Eddy, Finn, Hasegawa, Hudgins, Jacks, Morris, Takko and Van De Wege.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Crouse, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Condotta, Herrera and McCune.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Kara Durbin (786-7133)

**Background:**

State Energy Code.

The State Energy Code (Code) is part of the State Building Code, which sets the minimum construction requirements for buildings in the state. The Code provides a minimum level of energy efficiency for residential and non-residential buildings, but allows flexibility in building design, construction, and heating equipment efficiencies.

The State Building Code Council (Council) maintains the Code and may amend the Code by rule. The Code was last amended in 2006. Proposed 2009 changes to the Code were submitted in March of 2009.

Energy Star.

In 1992 the U.S. Environmental Protection Agency introduced Energy Star as a voluntary labeling program designed to identify and promote energy efficient products. Since its inception in 1992, the Energy Star program has expanded to include technical information and energy management tools.

One of the energy management tools offered by Energy Star is called the Portfolio Manager program. The Portfolio Manager program is used to track and assess energy and water consumption for an individual building or an entire building portfolio. Energy consumption and cost data can be entered into a Portfolio Manager account to track energy performance, assess energy management goals, and identify areas for savings.

Another tool offered by Energy Star is the National Energy Performance Rating System. This rating system is a type of external benchmark that assesses how efficiently a particular building uses energy, as compared to similar buildings nationwide. The rating system ranges from one to 100. A rating of 50 indicates average energy performance, while a rating of 75 or better indicates above-average energy performance.

Climate Action Team.

The Climate Action Team (CAT), a broad-based group of Washington business, academic, tribal, state and local government, labor, religious, and environmental leaders, worked throughout 2007 and 2008 to develop a comprehensive set of state-level policy recommendations that are intended to help meet the state's mandatory requirements for reducing greenhouse gas emissions to 1990 levels by 2020, and 50 percent below 1990 levels by 2050.

The CAT focused its efforts in four areas through Implementation Work Groups: the built environment, transportation, reducing the waste stream, and the role of the State Environmental Policy Act.

The Energy Efficiency and Green Buildings (EEGB) Implementation Work Group's objective was to identify actions that could result in significant emission reductions in Washington's built environment, both directly through the reduced use of fossil fuel-based energy and indirectly by reducing the use of greenhouse gas emissions intensive products.

The EEGB Implementation Work Group made three recommendations to the CAT in its final report:

1. Incentive-based approaches should be established to encourage the design, construction, and operation of buildings with superior energy performance, as well as to encourage the use of combined heat and power, distributed electricity generation, and other distributed and district energy, as well as water systems.
2. The energy efficiency of public buildings should be upgraded through performance standards, benchmarking requirements, and other measures.
3. The Code should be revised to achieve a 30 percent reduction in new building energy use, and a long-term state building and carbon reduction strategy should be established.

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### **Summary of Amended Bill:**

#### State Energy Code.

The State Energy Code (Code) for residential and non-residential buildings must reflect the 2006 edition of the Code, or as it may be amended by the State Building Code Council (Council) by rule. Existing technical standards for residential buildings, which have been superseded by rule, are removed.

Residential and non-residential construction permitted under the 2031 Code must achieve a 70 percent reduction in energy use, using the 2006 Code as the baseline. The Council must adopt state energy codes between 2013 and 2031 that incrementally move the state towards achieving the 2031 Code standards. If the Council determines that economic, technological, or process factors would significantly impede adoption of or compliance with the proposed energy codes, the Council may defer implementation.

#### Energy Efficiency Strategic Plan.

The Department of Community, Trade and Economic Development (DCTED) must develop and implement a strategic plan for enhancing energy efficiency and reducing greenhouse gas emissions from homes, buildings, districts, and neighborhoods. This plan must be used to direct future increases in the Code. The plan will identify barriers to achieving net zero energy use in homes and buildings and identify how to overcome those barriers in updated energy codes and policies. The Council and the DCTED must convene a work group to inform the initial development of the strategic plan. The plan must be completed by December 31, 2010.

#### Energy Consumption Data.

Beginning January 1, 2010, qualifying utilities must maintain records of energy consumption data for all non-residential and qualifying public agency buildings for which they provide service. Upon receiving authorization from a non-residential building owner or operator, the qualifying utility must upload all of the energy consumption data associated with that building to the Portfolio Manager. Non-public, non-residential building performance data must be uploaded either in 2011 or 2012, depending on the size of the building. This data must be disclosed to a prospective buyer, lessee, or lender.

#### Energy Benchmarks.

By January 1, 2010, the Department of General Administration (GA) must establish a State Portfolio Manager Master Account.

By July 1, 2010, each qualifying public agency must: (1) create an energy benchmark using a portfolio manager; (2) report the rating for each reporting public facility; and (3) link all portfolio manager accounts to the State Portfolio Manager Master Account.

Any reporting public facility with a National Energy Performance Rating score below 50 must undertake a preliminary energy audit by July 1, 2011. If potential cost-effective energy savings are identified, an investment grade energy audit must be completed by July 1, 2013, with implementation of the cost-effective energy conservation measures by July 1, 2016.

The GA must review the viability of relocation for any facility leased by the state that has a National Energy Performance Rating score below 50. Buildings that are not covered by the Rating score must undertake a preliminary energy audit by July 1, 2012. If cost-effective energy savings are identified, an investment grade energy audit must be completed by July 1, 2013.

#### **Amended Bill Compared to Original Bill:**

The specified membership of the work group convened by the DCTED and the Council is removed from the bill. Instead, the DCTED and the Council are directed to convene the work group with the affected parties.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

#### **Staff Summary of Public Testimony:**

(In support) These policies are an attempt to implement many of the recommendations made by the Energy Efficiency and Green Buildings Work Group of the Climate Action Team.

Energy efficiency is the cheapest and cleanest way of meeting our rising energy needs and our climate objectives. Buildings consume 40 percent of our total energy consumption. This bill sets reasonable goals for making our buildings more energy efficient.

The International Energy and Conservation Code (IECC) is not an improvement over the current State Energy Code (Code). The IECC is consistently behind the Code. It costs more to operate buildings that are designed and built under the IECC than under the Code. This bill takes the right approach in directing the State Building Code Council to consider the IECC, rather than mandating that the IECC be adopted. The IECC is a privately developed code that the state must purchase.

This bill will lead to significant energy savings for businesses and residents of the state. It is one of the four environmental priorities this year. This bill will help the state meet its greenhouse gas emissions goals.

All trades, including plumbers and electricians, should be represented on the work group. The state should take caution when developing new codes and standards.

(In support with concerns) The state should adopt the IECC, which will streamline the regulatory process. The 2009 edition of the IECC has increased energy efficiency standards by 15 percent. The IECC should be named specifically in the legislation. The IECC has wide acceptance in other states. The Code is not consistent with general design and build principles. Another labor representative should be added to the work group.

These energy efficiency standards for buildings are achievable. Private buildings make up 93 percent of the total building stock in the state. The state uses international codes for other areas of the building code, such as the mechanical code. It is important for architects to have uniform standards. The state bears the full cost of having to develop its energy code every three years. Adopting the IECC would not be less efficient.

(With concerns) Specialty contractors should also be included in the work group.

(Comments only) Pursuing tax cuts and realizing the cost of carbon is a better approach than setting energy efficiency reduction targets for buildings. Setting arbitrary energy efficiency targets may cause costs to go up.

This bill reflects many of the recommendations made as a result of the Energy Efficiency and Green Buildings Work Group of the Climate Action Team. This bill should allow the state to continue to move forward with further upgrades to the Code.

(Opposed) None.

**Persons Testifying:** (In support) Senator Kilmer, prime sponsor; David Baylow, Ecotope; Scott Sherman, Puget Sound Ashrae; Toby Crittenden, The Washington Bus; Timy Gugerty, City of Seattle; Jim Lazar, Microdesign Northwest; Carrie Dolwick, Northwest Energy Coalition; and Craig Engelking, Sierra Club.

(In support with concerns) Kraig Stevenson, International Code Council; John Cochran, American Institute of Architects; John Neff, Washington Association of Building Officials; John Darnall, City of Tumwater; Ann Grodnik, Seattle-Northwest Securities; Dale Wentworth, United Association Local 32; Sharon Moore, League of Women Voters; Richard King, International Brotherhood of Electrical Workers; Noah Reandeau, Northwest Energy Efficiency Council; and Stan Bowman, American Institute of Architects Washington Council.

(With concerns) Larry Stevens, Mechanical Contractors Association.

(Comments only) Todd Myers, Washington Policy Center; and Tony Usibelli, Department of Community, Trade and Economic Development.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on General Government Appropriations and without amendment by Committee on Technology, Energy & Communications. Signed by 9 members: Representatives Darneille, Chair; Takko, Vice Chair; Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells and Williams.

**Minority Report:** Do not pass. Signed by 5 members: Representatives McCune, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Armstrong, Crouse and Short.

**Staff:** Steve Smith (786-7178)

### **Summary of Recommendation of Committee On General Government Appropriations Compared to Recommendation of Committee On Technology, Energy & Communications:**

The striking amendment removes a section stating that sections 3, 7, and 8 of the bill are only in effect during fiscal periods in which specific appropriations are provided. Instead, the striking amendment modifies sections 3, 7, and 8 so that the agencies will only perform the activities directed by these sections to the extent specific funding is appropriated.

The striking amendment also restores language in existing law related to cities, towns, and counties that adopted residential energy codes prior to March 1, 1990, that exceeded the State Energy Code for residential structures.

The Director of the Office of Financial Management must require that: (1) a walk-through audit be conducted before any state agency may enter into or renew a lease agreement for a privately owned building over 10,000 square feet; (2) a new lease or lease renewal will not be entered into until the owner or lessor of the building agrees to perform an investment grade audit; and (3) a lease will not be entered into unless the owner or lessor agrees to make energy conservation upgrades within the first two years of the lease agreement.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill reflects some of the recommendations of the energy efficiency working group of the Climate Action Team. Energy efficiency is the cheapest, cleanest, and quickest way to meet our growing energy needs and our climate objectives. This bill can help local governments continue their energy efficiency efforts. Saving money by operating buildings more efficiently is important.

This bill reflects a balanced approach to energy efficiency in new and existing buildings. Verification of energy efficiency savings is important and may help the state attract additional federal stimulus dollars.

(In support with amendment) The Association of Washington Business supports this bill with the amendment restoring language in existing law related to preemption of more stringent local energy codes.

(Opposed) None.

**Persons Testifying:** (In support) Senator Kilmer, prime sponsor; Stan Bowman, Washington Council of the American Institute of Architects; Tim Gugerty, City of Seattle; and Carrie Dolwick, Northwest Energy Coalition.

(In support with amendment) Chris McCabe, Association of Washington Business.

(Opposed) None.

**Persons Signed In To Testify But Not Testifying:** None.