S-3842.1

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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, Liias, Lovelett, Nobles, Pedersen, Saldaña, and Stanford; by request of Office of the Governor)

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

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

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

In order to have a comprehensive understanding of the need and potential for updating the state's building stock, including the "split incentive issue" in which tenants are responsible for energy costs and building owners are responsible for choices about energy systems and building maintenance, more robust benchmarking and reporting for building performance, operations, and maintenance is needed. While the state has adopted comprehensive reporting requirements for larger buildings, it currently lacks similar requirements for smaller buildings. It is the intent of the legislature to extend existing building benchmarking, energy management, and operations and maintenance planning requirements to smaller commercial and multifamily residential buildings in order to assess the needs and opportunities for job creation and incentives and environmental and public health improvements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The department must provide a customer support program to building owners including, but not limited to, outreach and informational materials that connect building owners to utility resources, periodic training, phone and email support, and other technical assistance. The customer support program must include enhanced technical support, such as benchmarking assistance and assistance in developing energy management and operations and maintenance plans, for covered buildings whose owners typically do not employ dedicated building managers including, but not limited to, multifamily housing, child care facilities, and houses of worship. The department shall consider underresourced buildings with a high energy use per square foot, buildings in rural communities, buildings whose tenants are primarily small businesses, and those located in high-risk communities according to the department of health's environmental health disparities map.

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

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

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

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

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

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

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

(5) By July 1, 2029, the department must evaluate benchmarking data to determine energy use and greenhouse gas emissions averages by building type. The department must submit a report to the legislature and the governor by October 1, 2029, with recommendations for cost-effective building performance standards for tier 2 covered buildings. The report must contain information on estimated costs to building owners to implement the standard and anticipated implementation challenges. The department is authorized to adopt rules for inclusion of tier 2 covered buildings in the state energy performance standard, including greenhouse gas emissions, created in RCW 19.27A.210, beginning in 2030. In adopting performance standards, the department shall consider age of the building in setting targets for tier 2 buildings. The department is authorized to adopt performance standards for multifamily residential buildings on a longer timeline schedule than other tier 2 buildings. By December 31, 2030, the department shall adopt rules for performance standards for tier 2 buildings. The rules may not take effect before the end of the 2031 regular legislative session.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The department may not issue a certification for ((~~an~~)) a tier 1 incentive application under RCW 19.27A.220(6)(a) if doing so is likely to result in total incentive payments under RCW 19.27A.220 in excess of ((~~seventy-five million dollars~~)) $75,000,000.

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

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