SENATE BILL REPORT
SB 5057

As of February 22, 2023

Title: An act relating to creating a work group to evaluate the costs of the state energy performance standard for covered commercial buildings.

Brief Description: Creating a work group to evaluate the costs of the state energy performance standard for covered commercial buildings.

Sponsors: Senators Mullet, Schoesler, Gildon, Short, Torres, Van De Wege, Wellman and Wilson, L..

Brief History:

Committee Activity: Environment, Energy & Technology: 1/27/23, 2/17/23 [DPS-WM, w/oRec].

Ways & Means: 2/22/23.

Brief Summary of First Substitute Bill

- Delays by one year the Tier 1 covered buildings energy use intensity target reporting schedule required to comply with the State Energy Performance Standard (Standard).
- Creates a work group, convened by the Department of Commerce, to report on the financial impacts to all Tier 1 covered buildings required to comply with the Standard; and make specific recommendations to the Legislature regarding energy efficiency in the building sector.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5057 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; MacEwen, Ranking Member; Lovick, Trudeau and Wellman.

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

Minority Report: That it be referred without recommendation.
Signed by Senators Boehnke and Short.

Staff: Kimberly Cushing (786-7421)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Michael Bezanson (786-7449)

Background: State Energy Performance Standard. In 2019, the Legislature enacted the Clean Buildings Act, which required the Department of Commerce (Commerce) to establish by rule a State Energy Performance Standard (Standard). The Standard seeks to maximize reductions in greenhouse gas emissions from the building sector. The Standard includes energy use intensity targets by building type, and methods of conditional compliance that include an energy management plan, operations and maintenance program, energy efficiency audits, and investments in energy efficiency measures designed to meet the targets.

Tier 1 Buildings. Tier 1 covered buildings, also referred to as covered commercial buildings, must comply with the Standard. Tier 1 buildings include existing buildings where the sum of nonresidential, hotel, motel, and dormitory floor areas exceeds 50,000 gross square feet, excluding the parking garage area.

Compliance with the Standard, and reporting for Tier 1 buildings is tiered, and begins June 2026 for buildings greater than 220,000 square feet.

Tier 2 Buildings. In 2022, the Legislature expanded the Clean Buildings Act to include Tier 2 covered buildings, which include multifamily residential, nonresidential, hotel, motel, and dormitory floor areas that are greater than 20,000 square feet and less than 50,000 square feet, excluding the parking garage area. Tier 2 buildings also include multifamily residential buildings where the floor areas are equal to or greater than 50,000 square feet, excluding the parking garage area.

The 2022 law requires all Tier 2 buildings to report on benchmarking, implementation of energy management plans, and operations and maintenance programs. Commerce must complete rulemaking for Tier 2 buildings by December 2023. Reporting for Tier 2 buildings begins by July 1, 2027.

Early Adopter Incentive Program. The Standard includes an early adopter incentive program for Tier 1 building owners who comply with the Standard, or Tier 2 building owners that demonstrate compliance with benchmarking, energy management, and operations and maintenance planning requirements.

Tier 1 or multifamily building owners can receive a base incentive payment of $0.85 per gross square foot of floor area. Tier 2 building owners can receive a base incentive rate of $0.30 per gross square feet of floor area. Incentive payments exclude parking, unconditioned, or semiconditioned spaces. Commerce may not approve incentive payments that exceed a total of $75 million for Tier 1, or exceed a total of $150 million for Tier 2.

Reporting. Beginning January 15, 2022, and each year thereafter through 2029, Commerce must submit a report to the Governor and Legislature on the implementation of the Standard. The report must also include the financial impact to building owners required to comply and the amount of incentives provided.

Summary of Bill (First Substitute): One-Year Delay. The Tier 1 buildings reporting schedule for complying with the site-based energy use intensity target established as part of the Standard is delayed one year. Buildings with more than:

- 220,000 gross square feet must report June 1, 2027;
- 90,000 gross square feet, but less than 220,001 gross square feet, must report June 1, 2028; and
- 50,000 gross square feet, but less than 90,001 square feet, must report June 1, 2029.

Tier 1 buildings must continue to meet the statutory reporting requirements for complying with benchmarking, an operations and maintenance program, and an energy management plan. Starting July 1, 2023, a building owner may apply for a financial hardship exemption three years in advance of each five-year compliance requirement.

Work Group. Subject to amounts appropriated, the Department of Commerce must convene a work group to:

- report by December 15, 2023, on the financial impacts to all Tier 1 covered buildings required to comply with the Standard; and
- make certain recommendations to the Legislature, by September 1, 2024, regarding energy efficiency in the building sector, including identifying investments, strategies, or timelines for increasing energy efficiency, a cost-benefit analysis of options, and any statutory changes.

The work group, at a minimum, must consist of one representative from each public four-year institution of education, the State Board for Community and Technical Colleges, the Office of the Superintendent of Public Instruction, the Department of Social and Health Services, the Department of Corrections, the Department of Enterprise Services, health care, local government, and an organization representing privately owned Tier 1 buildings, and two representatives from a national association for industrial and office parks.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Delays one year, instead of two, the Tier 1 covered buildings energy use intensity target reporting schedule that is required to comply with the State Energy

Performance Standard (standard).

- Clarifies that an exemption under the standard is for a five-year compliance period.
- Provides that starting July 1, 2023, a building owner may apply for a financial hardship exemption three years in advance of each compliance requirement.
- Removes the two-year delay for Tier 2 covered buildings rulemaking and reporting requirements for state energy management and benchmarking.
- Directs the Department of Commerce to convene the work group rather than the Washington State University Energy Program.
- Requires the work group report on financial impacts to apply to all Tier 1 rather than only state-owned buildings, public K-12 school buildings, and public buildings of institutions of higher education.
- Adds to the work group one representative each from health care, local government, and an organization representing privately owned Tier buildings.
- Adds an intent section.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: The capital budget needs clarity. It is unclear what the size of our fiscal challenge is in this space across state agencies. In 2019, this bill was focused on larger buildings, such as convention centers or hotels but the pandemic shifted their focus to public health and trying to keep their doors open. Hospitals are still recovering from COVID, and while they seek to improve energy efficiency, it is not feasible to take the steps necessary for compliance at this time. The delay of requirements will allow hospitals to focus on pandemic recovery and patient care. The cost of implementation is much higher than anticipated. Many counties have aging facilities with systems that weren't constructed or installed under modern energy building codes. School districts are still working with local and state health departments to mitigate the transmission of airborne illness. It has not been possible for school districts to satisfy the desired air exchanges of local and state health districts and satisfy the rules of the Clean Building Act. There are close to 1000 schools built prior to 1977, or prior to the existence of building energy codes in our state. An alarming number of these facilities have only received minor renovations and updates since their completion. Additional improvements made to mechanical, or lighting systems will only scratch the surface of what’s necessary to ensure these buildings meet modern energy performance standards. Schools have real problems trying to pass capital bonds. The two-year extension would enable schools to accurately assess their energy performance and give time to schedule these upgrades that must occur when students are not at school.

If we plan to provide financial hardship exemptions, we need to move up the date to apply and qualify for these exemptions. It is impossible to write a capital budget when we don't know where our funds are going to be focused and which Washingtonians are going to be eligible for exemptions. A clarifying amendment should be included to ensure the work group is not limited to a review of only public buildings, but instead the covered buildings that are subject to the legislation.

CON: To reach Washington's greenhouse gas emissions limits, much work needs to be done with a particular focus on existing buildings. The building sector accounts for 27% of statewide emissions. The intent of the Clean Buildings Program is not that every building reach net zero, but to compare building of similar size and type to ensure that building improvements are gradual, common sense, and financially feasible. Only buildings that are above their energy use for their group will undertake cost effective efficiency improvements to reach the average. The governor's budget includes funding to help Tier 1 building owners cover the costs of energy audits. Commerce has established a portal for building owners to file an exemption request based on financial hardship and are able to process timely requests. Given the flexibility and opportunities available for financial hardship, delaying the implementation of the Clean Buildings Act is unnecessary, would create confusion for the business owners that have already been notified, and would have ripple effects compromising the ability to meet greenhouse gas emission limits. The 2019 legislative compliance dates are achievable for those who are acting. Commerce should have clear guidance on their ability to grant extensions for those who are diligently working to comply and can demonstrate a financial hardship.

OTHER: A two-year pause gives building owners a chance to fund improvements on capital and operating sides. We are concerned costs will be passed down to renters.

Persons Testifying (Environment, Energy & Technology): PRO: Senator Mark Mullet, Prime Sponsor; Paul Jewell, Washington State Association of Counties; Travis Hanson, Deer Park School District; Tim Carr, Meydenbauer Center/Bellevue Convention Center Authority; Jeff Baerwald, Nine Mile Falls School District; Remy Kerr, Washington State Hospital Association; Greg Hanon, NAIOP; Brian Buck, Lake Washington School District; Travis Bown, WA Assn of Maintenance and Operation Administrators; Kari Magill, Rowley Properties, Inc.; Charlie Brown, Federal Way Public Schools.

CON: Anna Lising, Governor's Office; Emily Salzberg, Department of Commerce; Kerry Meade, Northwest Energy Efficiency Council; Perry England; Amy Wheeless, NW Energy Coalition; Seth McKinney, Ecotope.

OTHER: Peter Godlewski, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: This bill passed in 2019. After the bill and as building owners went about their capital improvement plans, the COVID pandemic happened in early 2020. Industries most effected by COVID are still recovering. A lot of these industries have Tier 1 buildings. The one-year time limit acknowledges that COVID happened and allows industries to recover. There is no desire to unwind this law. The cost group will come up with smart suggestions on how to keep the buildings functional and energy efficient. In 2019, the legislation was supposed to be cost effective, but it is turning out to be more expensive. Commerce is supposed to report financial costs under the previous legislation, but their reports have not. School districts need the additional time . Schools have done a lot of improvements, but it is not clear that even after this work buildings will hit the standard. For many school districts the improvements needed are too expensive and require us to ask voters for bond approval. Please consider an amendment to exempt school that cannot pass a bond. School districts are still working with local and state health departments to mitigate the transmission of airborne illness. It has not been possible for school districts to satisfy the desired air exchanges of local and state health districts and satisfy the rules of the Clean Building Act. Schools must work around the school schedule for construction and the bill's timeframes are not realistic. The two-year delay in original bill versus the one-year delay is better for hospitals to make the needed improvements. The one-year delay better aligns with planning for the biennial state budget. Counties should be included on the workgroup. Many of the investments needed have short life spans and are not likely to last long enough to payoff.

CON: Commerce is undertaking emergency rules to allow more time to apply for financial hardship. This will help building owners and avoid blanket omission from the law. The delay will only create confusion and more cost more financially. Delays are unnecessary since there are hardship and cost-benefit exemptions.

Persons Testifying (Ways & Means): PRO: Senator Mark Mullet, Prime Sponsor; Greg Hanon, NAIOP; Travis Bown, Washington Association Of Maintenance & Operations Administrators; Travis Hanson, Deer Park School District; Remy Kerr, Washington State Hospital Association; Kari Magill, Rowley Properties, Inc.; Doug Vanderleest, Franklin Pierce School District; Darrell Jennings, State Board for Community and Technical Colleges; Charlie Brown, Pierce County Superintendents, Federal Way SD and Schools Coalition; Tim Carr, Meydenbauer Center; Paul Jewell, Washington State Association of Counties.

CON: Anna Lising, Governor's Office; Emily Salzberg, Department of Commerce; Amy Wheeless, NW Energy Coalition; Kerry Meade, Northwest Energy Efficiency Council.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.