

SENATE BILL REPORT

E3SHB 1257

As Passed Senate - Amended, April 15, 2019

Title: An act relating to energy efficiency.

Brief Description: Concerning energy efficiency.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Doglio, Tarleton, Lekanoff, Fitzgibbon, Dolan, Fey, Mead, Peterson, Kloba, Riccelli, Macri, Hudgins, Morris, Stanford, Appleton, Slatter, Tharinger, Jinkins, Pollet and Goodman; by request of Governor Inslee).

Brief History: Passed House: 3/29/19, 55-37.

Committee Activity: Ways & Means: 4/05/19, 4/08/19 [DPA, DNP, w/oRec].

Floor Activity:

Passed Senate - Amended: 4/15/19, 25-23.

Brief Summary of Bill (As Amended by Senate)

- Requires the Department of Commerce (Commerce) to establish a State Energy Performance Standard for covered commercial buildings by November 1, 2020.
- Requires Commerce to establish a State Energy Performance Standard Early Adoption Incentive Program.
- Requires the State Building Code Council to develop rules for electric vehicle infrastructure that require electric vehicle charging capability at all new buildings that provide on-site parking.
- Establishes energy benchmarking requirements for covered commercial buildings.
- Establishes a natural gas conservation standard.
- Authorizes a gas company to propose a renewable natural gas program.
- Requires each gas company to offer by tariff a voluntary renewable natural gas service available to all customers.

SENATE COMMITTEE ON WAYS & MEANS

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.

Majority Report: Do pass as amended.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Schoesler, Wagoner and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senator Mullet, Capital Budget Cabinet.

Staff: Jeffrey Mitchell (786-7438)

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 maximum and minimum level of energy efficiency for residential buildings and the minimum level of energy efficiency for nonresidential buildings. The State Building Code Council (council) maintains the code. Unless otherwise amended by rule, the code must reflect the 2006 edition.

The council reviews, updates, and adopts model state building codes every three years. The code must be designed to:

- construct increasingly energy efficient homes and buildings that help achieve the broader goal of building zero fossil-fuel greenhouse gas (GHG) emission homes and buildings by the year 2031;
- require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework; and
- allow space heating equipment efficiency to offset or substitute for building envelope thermal performance.

The council must adopt state energy codes that require buildings constructed from 2013 through 2031 to move incrementally toward a 70 percent reduction in energy use by 2031. The code must consider regional climatic conditions. The council may amend the code by rule if the amendments increase energy efficiency in the affected buildings.

Building Requirements for Electric Vehicle Infrastructure. The council must adopt rules for electric vehicle infrastructure requirements. Rules adopted by the council must consider applicable national and international standards.

Energy Benchmarking Requirements. An electric or gas utility that serves more than 25,000 customers in the state must maintain records of the energy consumption data of all nonresidential and certain public agency buildings to which the utility provides service. This data must be maintained in a format compatible with the United States Environmental Protection Agency's Energy Star Portfolio Manager, which is an Internet-based program that

allows users to track their energy consumption data and to benchmark the energy use of their buildings against comparable buildings.

Department of Commerce. Commerce must develop and implement a strategic plan for enhancing energy efficiency in, and reducing GHG emissions from, homes, buildings, districts, and neighborhoods. The strategic plan must be used to help direct the code in achieving the goal of building zero fossil-fuel GHG emission homes and buildings by the year 2031. The strategic plan must identify barriers to achieving net zero energy use in homes and buildings and identify how to overcome these barriers in future code updates and through complementary policies.

Utilities and Transportation Commission. The Utilities and Transportation Commission (UTC) regulates the rates, services, and practices of investor-owned utilities and transportation companies, including electrical companies, natural gas companies, and telecommunications companies. The UTC is required to ensure that rates charged by these companies are fair, just, reasonable, and sufficient.

Summary of Amended Bill: State Energy Performance Standard. By November 1, 2020, Commerce must establish by rule a state energy performance standard (standard) for covered commercial buildings. "Covered commercial building" means a building where the sum of nonresidential, hotel, motel, and dormitory floor areas exceeds 50,000 gross square feet, excluding the parking garage area. Commerce must provide the owners of covered buildings with notification of compliance requirements no later than July 1, 2021.

In developing the standard, Commerce must seek to maximize reductions in greenhouse gas (GHG) emissions from the building sector. The standard must include 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. Commerce must update the standard by July 1, 2029, and every five years thereafter. Prior to adopting or updating the standard, Commerce must identify the sources of information it relied upon, including peer-reviewed science.

A building owner of a covered commercial building must meet the following compliance schedule:

- June 1, 2026, for a building with more than 220,000 gross square feet;
- June 1, 2027, for a building with more than 90,000 gross square feet, but less than 220,001 gross square feet; and
- June 1, 2028, for a building with more than 50,000 gross square feet, but less than 90,001 gross square feet.

A covered commercial building is exempt from the standard if it meets at least one of several listed criteria, including:

- the building did not have a certificate of occupancy or temporary certificate of occupancy for all 12 months of the calendar year prior to the building owner compliance schedule;
- the building is an agricultural structure; or
- the primary use of the building is manufacturing or other industrial purposes.

Commerce may impose an administrative penalty upon a building owner for failing to submit documentation demonstrating compliance with the requirements of the standard. The penalty may not exceed \$5,000 plus an amount based on the duration of any continuing violation. The additional amount for a continuing violation may not exceed a daily amount equal to \$1 per year per gross square foot of floor area. Commerce may by rule, adjust the maximum penalty rates for inflation.

When requested to do so by the building owner or the building owner's agent, Commerce must reply and cite the section of law, code, or standard in a notice of violation for noncompliance with the requirements of the standard.

By January 15, 2022, and each year thereafter through 2029, Commerce must submit a report to the Governor and the appropriate committees of the Legislature on the implementation of the standard.

State Energy Performance Standard Early Adoption Incentive Program. Commerce must establish a State Energy Performance Standard Early Adoption Incentive Program (incentive program).

An eligible building owner may submit to Commerce an application for an incentive payment in a form and manner prescribed by Commerce. The application must be submitted in accordance with the following schedule:

- beginning July 1, 2021, through June 1, 2025, for a building with more than 220,000 gross square feet;
- beginning July 1, 2021, through June 1, 2026, for a building with more than 90,000 gross square feet, but less than 220,001 gross square feet; and
- beginning July 1, 2021, through June 1, 2027, for a building with more than 50,000 gross square feet, but less than 90,001 gross square feet.

An eligible building owner that demonstrates early compliance with the applicable energy use intensity target under the standard may receive a base incentive payment of \$0.85 per square foot of floor area, excluding parking, unconditioned, or semi-conditioned spaces.

Commerce may not issue a certification for an incentive application to an eligible building owner if doing so is likely to result in total incentive payments in excess of \$75 million.

Each qualifying utility must administer incentive payments for the incentive program. Any thermal energy company, electric utility, or gas company not otherwise required to administer incentive payments may voluntarily participate by providing notice to Commerce in a form and manner prescribed by Commerce.

Upon receiving notification from Commerce that a building owner has qualified for an incentive payment, each entity that administers incentive payments must make incentive payments to its customers who are eligible building owners of covered commercial buildings or multifamily residential buildings who qualify for the incentive program. When a building is served by more than one entity administering incentive payments, incentive payments must be proportional to the energy use intensity reduction of the participating entities' fuel.

A light and power business or a gas distribution business that participates in the incentive program is allowed a credit against its public utility tax (PUT) obligation an amount equal to:

- incentive payments made in any calendar year in accordance with the incentive program; and
- documented administrative costs not to exceed 5 percent of the incentive payments.

The PUT credit expires June 30, 2032.

If a review by the Joint Legislative Audit and Review Committee finds that measurable energy savings has increased in covered commercial buildings for which building owners are receiving an incentive payment from a qualifying utility, then the Legislature intends to extend the expiration date of the PUT credit.

Building Requirements for Electric Vehicle Infrastructure. The Council must develop rules for electric vehicle infrastructure that require electric vehicle charging capability at all new buildings providing on-site parking. Where parking is provided, the greater of one parking space or 10 percent of parking spaces, rounded to the next whole number, must be provided with wiring or raceway size to accommodate 208/240 V 40-amp or equivalent electric vehicle charging. Electrical rooms serving buildings with on-site parking must be sized to accommodate the potential for electrical equipment and distribution required to serve a minimum of 20 percent of the total parking spaces with 208/240 V 40-amp or equivalent electric vehicle charging. Load management infrastructure may be used to adjust the size and capacity of the required building electric service equipment and circuits on the customer facilities, as well as electric utility owned infrastructure, as allowed by applicable local and national electrical code. For accessible parking spaces, the greater of one parking space or 10 percent of accessible parking spaces, rounded to the next whole number, must be provided with electric vehicle charging infrastructure that may also serve adjacent parking spaces not designated as accessible parking.

For occupancies classified as assembly, education, or mercantile, the requirements for electric vehicle charging capability apply only to employee parking spaces. The requirements do not apply to occupancies classified as residential R-3, utility, or miscellaneous.

Energy Benchmarking Requirements. An electric or gas utility that is not a qualifying utility must either offer the upload service to the United States Environmental Protection Agency's Energy Star Portfolio Manager (portfolio manager) or provide customers who are building owners of covered commercial buildings with consumption data in an electronic document formatted for direct upload to the portfolio manager. Within 60 days of receiving a written or electronic request and authorization of a building owner, the utility must provide the building owner with monthly energy consumption data as required to benchmark the specified building.

For any covered commercial building with three or more tenants, an electric or gas utility that is not a qualifying utility must, upon request of the building owner, provide the building owner with aggregated monthly energy consumption data without requiring prior consent from tenants.

Electric and gas utilities must ensure that all data provided in compliance with energy benchmarking requirements does not contain personally identifiable information or customer-specific billing information about tenants of a covered commercial building.

Natural Gas Conservation Standard and Renewable Natural Gas Programs. Each gas company must identify and acquire all conservation measures that are available and cost-effective. Each company must establish an acquisition target every two years and must demonstrate the target will result in the acquisition of all resources identified as available and cost-effective. The cost-effectiveness analysis must include the societal costs of GHG emissions. The targets must be based on a conservation potential assessment prepared by an independent third party and approved by the UTC. Conservation targets must be approved by order of the UTC. The initial conservation target must take effect by 2022.

A gas company may propose a renewable natural gas program under which the company would supply renewable natural gas for a portion of the natural gas sold or delivered to its retail customers. The renewable natural gas program is subject to review and approval by the UTC. The customer charge for a renewable natural gas program may not exceed 5 percent of the amount charged to retail customers for natural gas. The environmental attributes of renewable natural gas must be retired using procedures established by the UTC and may not be used for any other purpose. The UTC must approve procedures for banking and transfer of environmental attributes.

Each gas company must offer by tariff a voluntary renewable natural gas service available to all customers to replace any portion of the natural gas that would otherwise be provided by the gas company. The tariff may provide reasonable limits on participation based on the availability of renewable natural gas and may use environmental attributes of renewable natural gas combined with natural gas. The voluntary renewable natural gas service must include delivery to, or the retirement on behalf of, the customer of an environmental attributes associated with the renewable natural gas.

"Renewable natural gas" means a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.

Societal Costs of Greenhouse Gas Emissions. For the natural gas conservation standard, the cost of GHG emissions resulting from the use of natural gas, including the effect of emissions occurring in the gathering, transmission, and distribution of natural gas to the end user, is equal to the cost per metric ton of carbon dioxide emissions, using the 2.5 percent discount rate, listed in table 2 of the "Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866," published by the Interagency Working Group on Social Cost of Greenhouse Gases of the United States Government, August 2016. The UTC must adjust the cost to reflect the effect of inflation.

The UTC must monitor GHG emissions resulting from natural gas and renewable natural gas delivered by each gas company to its customers, relative to the proportionate share of the state's GHG emissions reduction goal. The UTC must report to the Governor by January 1,

2020, and every three years thereafter, an assessment of whether the gas companies are on track to meet a proportionate share of the state's GHG emission reduction goal.

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 Engrossed Third Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: There are around 30 people signed in favor but not wishing to testify. These buildings can be around for 50 years. It is much more expensive to come back to retrofit, which is why it includes incentives to those building owners that will require the largest capital improvements. This bill will help create jobs up and down the wage scale ladder. We appreciate the liability limitations for the utilities administering the program. The language in the bill allows utilities to create cost effective renewable natural gas programs.

OTHER: Schools have a wide range in the age of buildings with some going all the way back to the 1940s. Some school districts might only have one person responsible for all of the facilities. Therefore, we are concerned about the cost to these school districts. We are also concerned about the cost of installing electric vehicle charging capacity for schools. We reiterate our initial concern, which is that we do not know what the new standard will be and do not know what it will cost. The cost could end up being much higher than what is contemplated and the level of financial assistance may be woefully inadequate. We urge three changes to this bill: put a cap on the penalty; the 10 percent and 50 percent requirements for electric vehicle charging stations and charging infrastructure is excessive and will result in stranded capital; and the amount of the incentive is inadequate.

Persons Testifying: PRO: Amy Wheelless, NW Energy Coalition; Laura Wilkeson, Puget Sound Energy; Charlie Brown, Cascade Natural Gas and NW Natural.

OTHER: Brian Sims, Washington State School Directors Association; Greg Hanon, NAIOP; Rod Kauffman, Building Owners and Managers Association.

Persons Signed In To Testify But Not Testifying: No one.