

SSB 5722 - H COMM AMD
By Committee on Appropriations

NOT ADOPTED 03/03/2022

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that in order to
4 meet the statewide greenhouse gas emissions limits in RCW 70A.45.020,
5 the state must require performance standards for existing buildings.

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

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

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

1 The definitions in this section apply throughout RCW 19.27A.210,
2 19.27A.220, 19.27A.230, ~~((and))~~ 19.27A.240, and sections 3 and 4 of
3 this act unless the context clearly requires otherwise.

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

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

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

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

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

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

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

26 (7) "Covered ~~((commercial))~~ building" ~~((means))~~ includes a tier 2
27 covered building or a building where the sum of nonresidential,
28 hotel, motel, and dormitory floor areas exceeds ~~((fifty thousand))~~
29 50,000 gross square feet, excluding the parking garage area.

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

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

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

35 (11) "Eligible building owner" means: (a) The owner of a covered
36 ~~((commercial))~~ building required to comply with the standard
37 established in RCW 19.27A.210; or (b) the owner of a multifamily
38 residential building where the floor area exceeds ~~((fifty thousand))~~
39 50,000 gross square feet, excluding the parking garage area.

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

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

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

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

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

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

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

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

38 (19) "Multifamily residential building" means a covered
39 multifamily building containing sleeping units or more than (~~two~~)

1 five dwelling units where occupants are primarily permanent in
2 nature.

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

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

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

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

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

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

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

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

37 NEW SECTION. Sec. 3. A new section is added to chapter 19.27A
38 RCW to read as follows:

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

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

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

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

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

39 (f) (i) The department is authorized to adopt rules related to the
40 imposition of an administrative penalty not to exceed 30 cents per

1 square foot upon a building owner for failing to submit documentation
2 demonstrating compliance with the requirements of this section.

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

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

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

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

24 (5) By July 1, 2029, the department must evaluate benchmarking
25 data to determine energy use and greenhouse gas emissions averages by
26 building type. The department must submit a report to the legislature
27 and the governor by October 1, 2029, with recommendations for cost-
28 effective building performance standards for tier 2 covered
29 buildings. The report must contain information on estimated costs to
30 building owners to implement the standard and anticipated
31 implementation challenges. The department is authorized to adopt
32 rules for inclusion of tier 2 covered buildings in the state energy
33 performance standard, including greenhouse gas emissions, created in
34 RCW 19.27A.210, beginning in 2030. In adopting performance standards,
35 the department shall consider age of the building in setting targets
36 for tier 2 buildings. The department is authorized to adopt
37 performance standards for multifamily residential buildings on a
38 longer timeline schedule than other tier 2 buildings. By December 31,
39 2030, the department shall adopt rules for performance standards for

1 tier 2 buildings. The rules may not take effect before the end of the
2 2031 regular legislative session.

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

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

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

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

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

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

28 (a) The building is either: (i) A covered commercial building
29 subject to the requirements of the standard established under RCW
30 19.27A.210; or (ii) a multifamily residential building where the
31 floor area exceeds (~~fifty thousand~~) 50,000 gross square feet,
32 excluding the parking garage area;

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

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

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

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

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

11 ~~((ii))~~ (b) For a building with more than ~~((ninety thousand))~~
12 90,000 gross square feet but less than ~~((two hundred twenty thousand
13 and one))~~ 220,001 gross square feet, beginning July 1, 2021, through
14 June 1, 2026; and

15 ~~((iii))~~ (c) For a building with more than ~~((fifty thousand))~~
16 50,000 gross square feet but less than ~~((ninety thousand and one))~~
17 90,001 gross square feet, beginning July 1, 2021, through June 1,
18 2027.

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

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

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

39 ~~((7))~~ (b) A tier 2 eligible building owner that demonstrates
40 compliance with the applicable benchmarking, energy management, and

1 operations and maintenance planning requirements may receive a base
2 incentive payment of 30 cents per gross square foot of floor area,
3 excluding parking, unconditioned, or semiconditioned spaces.

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

7 ~~((+8))~~ (9) The department must establish requirements for the
8 verification of energy consumption by the building owner and each
9 participating electric utility, gas company, and thermal energy
10 company.

11 ~~((+9))~~ (10) The department must provide an administrative
12 process for an eligible building owner to appeal a determination of
13 an incentive eligibility or amount.

14 ~~((+10))~~ (11) By September 30, 2025, and every two years
15 thereafter, the department must report to the appropriate committees
16 of the legislature on the results of the incentive program under this
17 section and may provide recommendations to improve the effectiveness
18 of the program. The 2025 report to the legislature must include
19 recommendations for aligning the incentive program established under
20 this section consistent with a goal of reducing greenhouse gas
21 emissions from substitutes, as defined in RCW 70A.60.010.

22 ~~((+11))~~ (12) The department may adopt rules to implement this
23 section.

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

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

30 (2) The department may not issue certification for a tier 2
31 incentive application under RCW 19.27A.220(6)(b) if doing so is
32 likely to result in total incentive payments under RCW
33 19.27A.220(6)(b) in excess of \$150,000,000.

34 NEW SECTION. **Sec. 6.** If specific funding for the purposes of
35 this act, referencing this act by bill or chapter number, is not
36 provided by June 30, 2022, in the omnibus appropriations act, this
37 act is null and void."

1 Correct the title.

EFFECT: A null and void clause is added, making the bill null and void unless funded in the budget.

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