

SSB 5722 - H AMD 1302

By Representative Hackney

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 the previous year to~~
11 ~~making an application for an incentive under RCW 19.27A.220))~~ that is
12 representative of energy use in a normal weather year.

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

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

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

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

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

27 (7) "Covered ~~((commercial))~~ building" ~~((means a building where~~
28 ~~the sum of nonresidential, hotel, motel, and dormitory floor areas~~
29 ~~exceeds fifty thousand gross square feet, excluding the parking~~
30 ~~garage area))~~ includes a tier 1 covered building and a tier 2 covered
31 building.

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

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

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

37 (11) "Eligible building owner" means: (a) The owner of a covered
38 ~~((commercial))~~ building required to comply with the standard
39 established in RCW 19.27A.210; or (b) ~~((the owner of a multifamily~~
40 ~~residential building where the floor area exceeds fifty thousand~~

1 ~~gross square feet, excluding the parking garage area))~~ all eligible
2 tier 2 covered building owners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.27A

2 RCW to read as follows:

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

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

17 (c) The department must provide a customer support program to
18 building owners including, but not limited to, outreach and
19 informational materials that connect tier 2 covered building owners
20 to utility resources, periodic training, phone and email support, and
21 other technical assistance. The customer support program must include
22 enhanced technical support, such as benchmarking assistance and
23 assistance in developing energy management and operations and
24 maintenance plans, for tier 2 covered buildings whose owners
25 typically do not employ dedicated building managers including, but
26 not limited to, multifamily housing, child care facilities, and
27 houses of worship. The department shall prioritize underresourced
28 buildings with a high energy use per square foot, buildings in rural
29 communities, buildings whose tenants are primarily small businesses,
30 and buildings located in high-risk communities according to the
31 department of health's environmental health disparities map.

32 (d) (i) The department may adopt rules related to the imposition
33 of an administrative penalty not to exceed 30 cents per square foot
34 upon a tier 2 covered building owner for failing to submit
35 documentation demonstrating compliance with the requirements of this
36 subsection.

37 (ii) Administrative penalties collected under this section must
38 be deposited into the low-income weatherization and structural
39 rehabilitation assistance account created in RCW 70A.35.030 and

1 reinvested into the program, where feasible, to support compliance
2 with the standard.

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

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

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

19 (5)(a) By July 1, 2029, the department must evaluate benchmarking
20 data to determine energy use and greenhouse gas emissions averages by
21 tier 2 covered building type.

22 (b) The department must submit a report to the legislature and
23 the governor by October 1, 2029, with recommendations for cost-
24 effective building performance standards for tier 2 covered
25 buildings. The report must contain information on estimated costs to
26 building owners to implement the performance standards and
27 anticipated implementation challenges.

28 (c)(i) By December 31, 2030, the department must adopt rules for
29 performance standards for tier 2 covered buildings.

30 (ii) In adopting these performance standards, the department must
31 consider the age of the building in setting energy use intensity
32 targets.

33 (iii) The department may adopt performance standards for
34 multifamily residential buildings on a longer timeline schedule than
35 for other tier 2 covered buildings.

36 (iv) The rules may not take effect before the end of the 2031
37 regular legislative session.

38 (v) The department must include a small business economic impact
39 statement pursuant to chapter 19.85 RCW as part of the rule making.

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

3 (1) The department must establish a state energy performance
4 standard early adoption incentive program consistent with the
5 requirements of this section. This early adoption incentive program
6 may include incentive payments for early adoption of tier 2 covered
7 building owner requirements as described in subsection (6) of this
8 section.

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

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

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

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

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

35 (c) At least one electric utility, gas company, or thermal energy
36 company providing or delivering energy to the covered commercial
37 building or multifamily residential building is participating in the
38 incentive program by administering incentive payments as provided in
39 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))~~ A covered building owner who meets the
4 requirements of subsection (4) of this section may submit an
5 application to the department for an incentive payment in a form and
6 manner prescribed by the department. The application must be
7 submitted in accordance 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 ~~((b))~~ (6)(a) A tier 2 covered building owner may receive an
20 incentive payment in the amounts specified in subsection (8)(b) of
21 this section only if all required benchmarking, energy management,
22 and operations and maintenance planning documentation as required
23 under section 3 of this act has been submitted to the department and
24 an incentive application has been completed.

25 (b) An eligible tier 2 covered building owner may submit an
26 application beginning July 1, 2025, through June 1, 2030.

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

34 ~~((6) An eligible building owner))~~ (8)(a) An eligible owner of a
35 tier 1 covered building or an eligible owner of a multifamily
36 residential building greater than 50,000 gross square feet, excluding
37 the parking area, that demonstrates early compliance with the
38 applicable energy use intensity target under the standard established
39 under RCW 19.27A.210 may receive a base incentive payment of

1 ((~~eighty-five~~)) 85 cents per gross square foot of floor area,
2 excluding parking, unconditioned, or semiconditioned spaces.

3 ((~~(7)~~)) (b) A tier 2 eligible building owner that demonstrates
4 compliance with the applicable benchmarking, energy management, and
5 operations and maintenance planning requirements may receive a base
6 incentive payment of 30 cents per gross square foot of floor area,
7 excluding parking, unconditioned, or semiconditioned spaces. The
8 department may implement a tiered incentive structure for upgrading
9 multifamily buildings to provide an enhanced incentive payment to
10 multifamily building owners willing to commit to antidisplacement
11 provisions.

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

15 ((~~(8)~~)) (10) The department must establish requirements for the
16 verification of energy consumption by the building owner and each
17 participating electric utility, gas company, and thermal energy
18 company.

19 ((~~(9)~~)) (11) The department must provide an administrative
20 process for an eligible building owner to appeal a determination of
21 an incentive eligibility or amount.

22 ((~~(10)~~)) (12) By September 30, 2025, and every two years
23 thereafter, the department must report to the appropriate committees
24 of the legislature on the results of the incentive program under this
25 section and may provide recommendations to improve the effectiveness
26 of the program. The 2025 report to the legislature must include
27 recommendations for aligning the incentive program established under
28 this section consistent with a goal of reducing greenhouse gas
29 emissions from substitutes, as defined in RCW 70A.60.010.

30 ((~~(11)~~)) (13) The department may adopt rules to implement this
31 section.

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

34 (1) The department may not issue a certification for ((~~an~~)) a
35 tier 1 incentive application under RCW 19.27A.220(8)(a) if doing so
36 is likely to result in total incentive payments under RCW
37 19.27A.220(8)(a) in excess of ((~~seventy-five million dollars~~))
38 \$75,000,000.

1 (2) The department may not issue certification for a tier 2
2 incentive application under RCW 19.27A.220(8)(b) if doing so is
3 likely to result in total incentive payments under RCW
4 19.27A.220(8)(b) in excess of \$150,000,000.

5 **Sec. 6.** RCW 19.27A.240 and 2019 c 285 s 6 are each amended to
6 read as follows:

7 (1)(a) Each qualifying utility must administer incentive payments
8 for the state energy performance standard early adoption incentive
9 program established in RCW 19.27A.220 on behalf of its customers who
10 are eligible building owners of covered commercial buildings ~~((or))~~,
11 multifamily residential buildings, or other tier 2 covered buildings
12 consistent with the requirements of this section. Any thermal energy
13 company, electric utility, or gas company not otherwise required to
14 administer incentive payments may voluntarily participate by
15 providing notice to the department in a form and manner prescribed by
16 the department.

17 (b) Nothing in this subsection (1) requires a qualifying utility
18 to administer incentive payments for the state energy performance
19 standard early adoption incentive program established in RCW
20 19.27A.220 for which the qualifying utility is not allowed a credit
21 against taxes due under this chapter, as described in RCW 82.16.185.

22 (2) An entity that administers the payments for the incentive
23 program under this section must administer the program in a manner
24 that is consistent with the standard established and any rules
25 adopted by the department under RCW 19.27A.210 ~~((and))~~, 19.27A.220,
26 and section 3 of this act.

27 (3) Upon receiving notification from the department that a
28 building owner has qualified for an incentive payment, each entity
29 that administers incentive payments under this section must make
30 incentive payments to its customers who are eligible building owners
31 of covered commercial buildings or multifamily residential buildings
32 who qualify as provided under this section and at rates specified in
33 RCW 19.27A.220 ~~((+6))~~ (8). When a building is served by more than one
34 entity administering incentive payments, incentive payments must be
35 proportional to the energy use intensity reduction of the
36 participating entities' fuel.

37 (4) The participation by an entity in the administration of
38 incentive payments under this section does not relieve the entity of

1 any obligation that may otherwise exist or be established to provide
2 customer energy efficiency programs or incentives.

3 (5) An entity that administers the payments for the incentive
4 program under this section is not liable for excess payments made in
5 reliance on amounts reported by the department as due and payable as
6 provided under RCW 19.27A.220, if such amounts are later found to be
7 abnormal or inaccurate due to no fault of the business.

8 NEW SECTION. **Sec. 7.** If specific funding for the purposes of
9 this act, referencing this act by bill or chapter number, is not
10 provided by June 30, 2022, in the omnibus appropriations act, this
11 act is null and void."

12 Correct the title.

EFFECT: Adds clarifying language, corrects internal references,
and adds the section of state law involving the administration of the
early adoption incentive payment to include Tier 2 buildings.

Changes the date for which eligible Tier 2 covered building
owners may submit an application for an incentive payment from July
1, 2024, to July 1, 2025.

Adds a clause to make the bill null and void unless funded in the
budget.

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