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**SUBSTITUTE SENATE BILL 5057**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Mullet, Schoesler, Gildon, Short, Torres, Van De Wege, Wellman, and L. Wilson)

AN ACT Relating to creating a work group to evaluate the costs of the state energy performance standard for covered commercial buildings; amending RCW 19.27A.210; creating new sections; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that improving the energy efficiency of buildings is the most cost-effective means to meet the state's emissions and energy goals for buildings. The clean buildings state energy performance standard sets energy use intensity targets for buildings that must be met over time. The energy use intensity targets are regionally appropriate, weather-normalized means and are established according to building size and type. Buildings built after 2015 have a lower energy use intensity target than those built before 2015.

(2) The legislature acknowledges that the global pandemic had a significant impact on the economy and has made it difficult for some building owners to comply with the state energy performance standard under the current timelines. Therefore, for tier 1 covered buildings, the legislature intends to delay compliance with the standard for one year.

(3) Furthermore, the legislature recognizes that building owners need certainty when applying for and receiving any of the exemptions provided in RCW 19.27A.210. While building owners currently may not apply for an exemption more than 365 days in advance of their scheduled compliance date, the legislature intends to ensure that the department of commerce pursues an emergency rule to allow tier 1 covered building owners to apply for an exemption three years in advance of their scheduled compliance date.

**Sec.**  RCW 19.27A.210 and 2021 c 65 s 19 are each amended to read as follows:

(1)(a) By November 1, 2020, the department must establish by rule a state energy performance standard for covered commercial buildings.

(b) In developing energy performance standards, the department shall seek to maximize reductions of greenhouse gas 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 investment in energy efficiency measures designed to meet the targets. The department shall use ANSI/ASHRAE/IES standard 100-2018 as an initial model for standard development. The department must update the standard by July 1, 2029, and every five years thereafter. Prior to the adoption or update of the standard, the department must identify the sources of information it relied upon, including peer-reviewed science.

(2) In establishing the standard under subsection (1) of this section, the department:

(a) Must develop energy use intensity targets that are no greater than the average energy use intensity for the covered commercial building occupancy type with adjustments for unique energy using features. The department must also develop energy use intensity targets for additional property types eligible for incentives in RCW 19.27A.220. The department must consider regional and local building energy utilization data, such as existing energy star benchmarking data, in establishing targets for the standard. Energy use intensity targets must be developed for two or more climate zones and be representative of energy use in a normal weather year;

(b) May consider building occupancy classifications from ANSI/ASHRAE/IES standard 100-2018 and the United States environmental protection agency's energy star portfolio manager when developing energy use intensity targets;

(c) May implement lower energy use intensity targets for more recently built covered commercial buildings based on the state energy code in place when the buildings were constructed;

(d)(i) Must adopt a conditional compliance method that ensures that covered commercial buildings that do not meet the specified energy use intensity targets are taking action to achieve reduction in energy use, including investment criteria for conditional compliance that ensure that energy efficiency measures identified by energy audits are implemented to achieve a covered commercial building's energy use intensity target. The investment criteria must require that a building owner adopt an implementation plan to meet the energy intensity target or implement an optimized bundle of energy efficiency measures that provides maximum energy savings without resulting in a savings-to-investment ratio of less than 1.0, except as exempted in (d)(ii) of this subsection. The implementation plan must be based on an investment grade energy audit and a life-cycle cost analysis that accounts for the period during which a bundle of measures will provide savings. The building owner's cost for implementing energy efficiency measures must reflect net cost, excluding any costs covered by utility or government grants. The implementation plan may exclude measures that do not pay for themselves over the useful life of the measure and measures excluded under (d)(ii) of this subsection. The implementation plan may include phased implementation such that the building owner is not required to replace a system or equipment before the end of the system or equipment's useful life;

(ii) For those buildings or structures that are listed in the state or national register of historic places; designated as a historic property under local or state designation law or survey; certified as a contributing resource with a national register listed or locally designated historic district; or with an opinion or certification that the property is eligible to be listed on the national or state registers of historic places either individually or as a contributing building to a historic district by the state historic preservation officer or the keeper of the national register of historic places, no individual energy efficiency requirement need be met that would compromise the historical integrity of a building or part of a building.

(3) Based on records obtained from each county assessor and other available information sources, the department must create a database of covered commercial buildings and building owners required to comply with the standard established in accordance with this section.

(4) By July 1, 2021, the department must provide the owners of covered buildings with notification of compliance requirements.

(5) The department must develop a method for administering compliance reports from building owners.

(6) The department must provide a customer support program to building owners including, but not limited to, outreach and informational material, periodic training, phone and email support, and other technical assistance.

(7) The building owner of a covered commercial building must report the building owner's compliance with the standard to the department in accordance with the schedule established under subsection ((~~(8)~~)) (9) of this section and every five years thereafter. For each reporting date, the building owner must submit documentation to demonstrate that:

(a) The weather normalized energy use intensity of the covered commercial building measured in the previous calendar year is less than or equal to the energy use intensity target; or

(b) The covered commercial building has received conditional compliance from the department based on energy efficiency actions prescribed by the standard; or

(c) The covered commercial building is exempt from the standard ((~~by demonstrating~~)) for the five-year compliance period if it is demonstrated that the building meets one of the following criteria:

(i) The building did not have a certificate of occupancy or temporary certificate of occupancy for all ((~~twelve~~)) 12 months of the calendar year prior to the building owner compliance schedule established under subsection ((~~(8)~~)) (9) of this section;

(ii) The building did not have an average physical occupancy of at least ((~~fifty~~)) 50 percent throughout the calendar year prior to the building owner compliance schedule established under subsection ((~~(8)~~)) (9) of this section;

(iii) The sum of the building's gross floor area minus unconditioned and semiconditioned spaces, as defined in the Washington state energy code, is less than ((~~fifty thousand~~)) 50,000 gross square feet;

(iv) The primary use of the building is manufacturing or other industrial purposes, as defined under the following use designations of the international building code: (A) Factory group F; or (B) high hazard group H;

(v) The building is an agricultural structure; or

(vi) The building meets at least one of the following conditions of financial hardship: (A) The building had arrears of property taxes or water or wastewater charges that resulted in the building's inclusion, within the prior two years, on a city's or county's annual tax lien sale list; (B) the building has a court appointed receiver in control of the asset due to financial distress; (C) the building is owned by a financial institution through default by a borrower; (D) the building has been acquired by a deed in lieu of foreclosure within the previous ((~~twenty-four~~)) 24 months; (E) the building has a senior mortgage subject to a notice of default; or (F) other conditions of financial hardship identified by the department by rule. Starting July 1, 2023, a building owner may apply for a financial hardship exemption three years in advance of each compliance requirement.

(8) A building owner of a covered commercial building must meet the following reporting schedule for complying with the ((~~standard established~~)) energy benchmarking, an operations and maintenance program, and an energy management plan established as part of the standard under this section:

(a) For a building with more than ((~~two hundred twenty thousand~~)) 220,000 gross square feet, June 1, 2026;

(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, June 1, 2027; and

(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, June 1, 2028.

(9) A building owner of a covered commercial building must meet the following reporting schedule for complying with the site-based energy use intensity target established as part of the standard under this section:

(a) For a building with more than 220,000 gross square feet, June 1, 2027;

(b) For a building with more than 90,000 gross square feet but less than 220,001 gross square feet, June 1, 2028; and

(c) For a building with more than 50,000 gross square feet but less than 90,001 gross square feet, June 1, 2029.

(10)(a) The department may issue a notice of violation to a building owner for noncompliance with the requirements of this section. A determination of noncompliance may be made for any of the following reasons:

(i) Failure to submit a compliance report in the form and manner prescribed by the department;

(ii) Failure to meet an energy use intensity target or failure to receive conditional compliance approval;

(iii) Failure to provide accurate reporting consistent with the requirements of the standard established under this section; and

(iv) Failure to provide a valid exemption certificate.

(b) In order to create consistency with the implementation of the standard and rules adopted under this section, the department must reply and cite the section of law, code, or standard in a notice of violation for noncompliance with the requirements of this section when requested to do so by the building owner or the building owner's agent.

((~~(10)~~)) (11) The department is authorized to impose an administrative penalty upon a building owner for failing to submit documentation demonstrating compliance with the requirements of this section. The penalty may not exceed an amount equal to ((~~five thousand dollars~~)) $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 ((~~one dollar~~)) $1.00 per year per gross square foot of floor area. The department may by rule increase the maximum penalty rates to adjust for the effects of inflation.

((~~(11)~~)) (12) 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.

((~~(12)~~)) (13) The department must adopt rules as necessary to implement this section, including but not limited to:

(a) Rules necessary to ensure timely, accurate, and complete reporting of building energy performance for all covered commercial buildings;

(b) Rules necessary to enforce the standard established under this section; and

(c) Rules that provide a mechanism for appeal of any administrative penalty imposed by the department under this section.

((~~(13)~~)) (14) Upon request by the department, each county assessor must provide property data from existing records to the department as necessary to implement this section.

((~~(14)~~)) (15) By January 15, 2022, and each year thereafter through 2029, the department must submit a report to the governor and the appropriate committees of the legislature on the implementation of the state energy performance standard established under this section. The report must include information regarding the adoption of the ANSI/ASHRAE/IES standard 100-2018 as an initial model, the financial impact to building owners required to comply with the standard, the amount of incentives provided under RCW 19.27A.220 and 19.27A.230, and any other significant information associated with the implementation of this section.

NEW SECTION. **Sec.**  (1) The department of commerce must convene a work group to:

(a) Report on the financial impacts to all tier 1 covered buildings required to comply with the state energy performance standard under RCW 19.27A.210;

(b) Make recommendations to the legislature regarding energy efficiency in the building sector that include, but are not limited to:

(i) Identifying energy efficiency investments or other strategies, and related timelines, for increasing energy efficiency in the buildings sector;

(ii) Providing a cost-benefit analysis of options, including energy efficiency, to meet the goal of reducing greenhouse gas emissions from the buildings sector; and

(iii) Recommending any changes to chapter 285, Laws of 2019.

(2) The work group membership convened under this section must include, but not be limited to: One representative of the office of the superintendent of public instruction; one representative of each of the state's public four-year institutions of higher education; one representative of the state board for community and technical colleges; one representative of the department of social and health services; one representative of the department of corrections; one representative of the department of enterprise services; one representative of health care; one representative of local government; one representative from an organization representing privately owned tier 1 covered buildings; and two representatives of a national association for industrial and office parks.

(3) Subject to the availability of amounts appropriated for this specific purpose, and in compliance with RCW 43.01.036, the department of commerce must submit to the appropriate committees of the legislature:

(a) Financial impacts as required under subsection (1)(a) of this section by December 15, 2023; and

(b) A final report with recommendations as required under subsection (1)(b) of this section by September 1, 2024.

(4) This section expires January 1, 2025.

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