

**2SHB 1390** - S COMM AMD

By Committee on Environment, Energy & Technology

**ADOPTED 04/12/2023**

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

3 "NEW SECTION. **Sec. 1.** The legislature recognizes that building  
4 decarbonization is necessary to achieve the state's climate goals.  
5 Washington is a member of the national building performance standards  
6 coalition and is leading the nation with existing building  
7 performance standards. District energy policy could be used in  
8 coordination with any future statewide building performance standards  
9 policies to reduce commercial and large state-owned building  
10 emissions.

11 Due to the increased prevalence of extreme summer heat events,  
12 the ability to cool space at our state-run campus facilities,  
13 including correctional facilities, is an essential function of  
14 maintaining humane living, working, and learning conditions.

15 Upgrading existing district energy systems has great potential to  
16 increase efficiency, oftentimes more so than a building-by-building  
17 approach.

18 Upgrading and constructing district energy systems will employ  
19 skilled labor, including trades that have historically performed work  
20 on fossil fuel energy sources. This work will be an important part of  
21 a just transition to a clean energy economy.

22 For state-owned facilities connected to district energy systems,  
23 the legislature recognizes that it may take years, multiple budget  
24 cycles, and commitments as anchor customers to develop and upgrade  
25 campus district energy systems, but remains committed to steadily  
26 investing in plans developed by these agencies and their selected  
27 providers. Having plans for multiyear customer commitments or  
28 spending programs will set the state and private sector up well for  
29 applying for federal grants and resources and to appropriately plan  
30 capital, operating, and climate commitment act funding for these  
31 investments over time.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 19.27A  
2 RCW to read as follows:

3        (1) The definitions in this subsection apply throughout this  
4 section unless the context clearly requires otherwise.

5        (a) "Campus" means a collection of buildings served by a district  
6 heating, cooling, water reuse, or power system.

7        (b) "Campus district energy system" means a district energy  
8 system that provides heating, cooling, or heating and cooling to a  
9 campus through a distributed system providing steam, hot water, or  
10 cool water to three or more buildings with more than 100,000 square  
11 feet of combined conditioned space, where the system and all  
12 connected buildings are owned by:

13        (i) A single entity;

14        (ii) A public-private partnership in which a private entity owns  
15 the systems providing heating, cooling, or heating and cooling to  
16 buildings owned by one public entity; or

17        (iii) Two private entities in which one private entity owns the  
18 connected buildings and another private entity owns the system  
19 providing heating, cooling, or heating and cooling to the buildings.

20        (c) "State campus district energy system" means a district energy  
21 system that provides heating, cooling, or heating and cooling to a  
22 campus through a distributed system providing steam, hot water, or  
23 cool water to five or more buildings with more than 100,000 square  
24 feet of combined conditioned space, where the system and all  
25 connected buildings are owned by the state of Washington or by a  
26 public-private partnership including one public buildings owner and  
27 one private entity.

28        (2)(a) The owner of a state campus district energy system must  
29 develop a decarbonization plan that provides a strategy for up to 15  
30 years for the state campus district energy system. The department of  
31 commerce may approve a decarbonization plan that is based on a  
32 planning time frame longer than 15 years. The decarbonization plan  
33 must include:

34        (i) Mechanisms to replace fossil fuels in the heating plants,  
35 including a schedule for replacement;

36        (ii) An evaluation of possible options to partner with nearby  
37 sources and uses of waste heat and cooling;

38        (iii) An examination of opportunities to add buildings or other  
39 facilities to the system once it is decarbonized, a strategy to

1 incentivize growth of a decarbonized system, and requirements for  
2 facilities joining the system; and

3 (iv) An evaluation, prioritization, and scheduled plan of  
4 reducing energy use through conservation efforts both at the central  
5 plant and in the buildings connected to district energy systems that  
6 results in meeting the campus energy use intensity target.

7 (b) The owner of a state campus district energy system is  
8 encouraged to include the following considerations in a  
9 decarbonization plan:

10 (i) Distribution network upgrades;

11 (ii) On-site energy storage facilities;

12 (iii) Space cooling for residential facilities;

13 (iv) Labor and workforce, including state registered  
14 apprenticeship utilization;

15 (v) Options for public-private partnerships;

16 (vi) Incorporation of industrial symbiosis projects or networks  
17 as described in chapter 308, Laws of 2021.

18 (c) The owner of a state campus district energy system must  
19 consult with the electric utility and the natural gas utility serving  
20 the site of the system during decarbonization plan development.

21 (3)(a) The owner of a state campus district energy system must  
22 begin developing a decarbonization plan by June 30, 2024, and must  
23 submit a final decarbonization plan to the department of commerce by  
24 June 30, 2025.

25 (b) Upon submittal to the department of commerce, decarbonization  
26 plans must be reviewed and approved by the department of commerce.  
27 The department of commerce may ask for a decarbonization plan to be  
28 revised and resubmitted if it does not meet standards as determined  
29 by the department of commerce.

30 (c) Every five years after June 30, 2025, the owner of a state  
31 campus district energy system must resubmit the decarbonization plan,  
32 along with a progress report on the implementation of the  
33 decarbonization plan, to the department of commerce.

34 (4) The department of commerce must provide a summary report on  
35 the decarbonization plans required in subsection (3) of this section  
36 to the governor and the appropriate committees of the legislature by  
37 December 1, 2025.

38 (5) The owner of a state campus district energy system is not  
39 required to meet the energy use intensity target in all the connected  
40 buildings that are heated, cooled, or heated and cooled by the

1 system, or to conduct an investment grade audit, to otherwise comply  
2 with the state energy performance standard requirements in RCW  
3 19.27A.200 through 19.27A.250 if the following conditions for an  
4 alternative compliance pathway are met:

5 (a) The owner of a state campus district energy system is  
6 implementing a department of commerce-approved decarbonization plan  
7 or has fully implemented a department of commerce-approved  
8 decarbonization plan for the state campus district energy system and  
9 all of its connected buildings that, when fully implemented, meets  
10 the energy use intensity target established for the campus at the  
11 time of required measurement and verification. The owner may apply  
12 for phased implementation through conditional compliance in  
13 accordance with requirements of the decarbonization plan;

14 (b) The owner of the state campus district energy system meets  
15 the benchmarking, energy management, and operations and maintenance  
16 planning requirements under RCW 19.27A.200 through 19.27A.250 for the  
17 state campus district energy system and all of its connected  
18 buildings; and

19 (c) The owner of a state campus district energy system submits a  
20 request to the department of commerce once during every five-year  
21 compliance cycle as part of documentation submitted in accordance  
22 with RCW 19.27A.210(7), and the department of commerce approves the  
23 request.

24 (6) The owner of a campus district energy system may submit a  
25 request to the department of commerce to opt-in to the process for  
26 approval of an alternative compliance pathway as outlined in this  
27 section. If approved by the department of commerce, the campus  
28 district energy system must follow all of the requirements outlined  
29 for a state campus district energy system in this section, and the  
30 department of commerce must apply all authorities granted under this  
31 section for state campus district energy systems to such a campus  
32 district energy system.

33 **Sec. 3.** RCW 19.27A.210 and 2021 c 65 s 19 are each amended to  
34 read as follows:

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

37 (b) In developing energy performance standards, the department  
38 shall seek to maximize reductions of greenhouse gas emissions from  
39 the building sector. The standard must include energy use intensity

1 targets by building type and methods of conditional compliance that  
2 include an energy management plan, operations and maintenance  
3 program, energy efficiency audits, and investment in energy  
4 efficiency measures designed to meet the targets. The department  
5 shall use ANSI/ASHRAE/IES standard 100-2018 as an initial model for  
6 standard development. The department must update the standard by July  
7 1, 2029, and every five years thereafter. Prior to the adoption or  
8 update of the standard, the department must identify the sources of  
9 information it relied upon, including peer-reviewed science.

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

12 (a) Must develop energy use intensity targets that are no greater  
13 than the average energy use intensity for the covered commercial  
14 building occupancy type with adjustments for unique energy using  
15 features. The department must also develop energy use intensity  
16 targets for additional property types eligible for incentives in RCW  
17 19.27A.220. The department must consider regional and local building  
18 energy utilization data, such as existing energy star benchmarking  
19 data, in establishing targets for the standard. Energy use intensity  
20 targets must be developed for two or more climate zones and be  
21 representative of energy use in a normal weather year;

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

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

29 (d) (i) Must adopt a conditional compliance method that ensures  
30 that covered commercial buildings that do not meet the specified  
31 energy use intensity targets are taking action to achieve reduction  
32 in energy use, including investment criteria for conditional  
33 compliance that ensure that energy efficiency measures identified by  
34 energy audits are implemented to achieve a covered commercial  
35 building's energy use intensity target. The investment criteria must  
36 require that a building owner adopt an implementation plan to meet  
37 the energy intensity target or implement an optimized bundle of  
38 energy efficiency measures that provides maximum energy savings  
39 without resulting in a savings-to-investment ratio of less than 1.0,  
40 except as exempted in (d) (ii) of this subsection. The implementation

1 plan must be based on an investment grade energy audit and a life-  
2 cycle cost analysis that accounts for the period during which a  
3 bundle of measures will provide savings. The building owner's cost  
4 for implementing energy efficiency measures must reflect net cost,  
5 excluding any costs covered by utility or government grants. The  
6 implementation plan may exclude measures that do not pay for  
7 themselves over the useful life of the measure and measures excluded  
8 under (d)(ii) of this subsection. The implementation plan may include  
9 phased implementation such that the building owner is not required to  
10 replace a system or equipment before the end of the system or  
11 equipment's useful life;

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

24 (e) Must provide an alternative compliance pathway for an owner  
25 of a state campus district energy system, in accordance with section  
26 2 of this act, and more broadly for the owner of any campus district  
27 energy system that is approved by the department to opt-in in  
28 accordance with section 2(6) of this act;

29 (f) Must guarantee that the owner of a state campus district  
30 energy system is not required to implement more than one energy  
31 management plan and more than one operations and maintenance plan for  
32 the campus;

33 (g) Must guarantee that a state campus district energy system, as  
34 defined in section 2 of this act, and all buildings connected to a  
35 state campus district energy system, are in compliance with any  
36 requirements for campus buildings to implement energy efficiency  
37 measures identified by an energy audit if:

38 (i) The energy audit demonstrates the energy savings from the  
39 state campus district energy system energy efficiency measures will

1 be greater than the energy efficiency measures identified for the  
2 campus buildings; and

3 (ii) The state campus district energy system implements the  
4 energy efficiency measures.

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

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

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

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

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

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

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

29 (c) The covered commercial building is exempt from the standard  
30 by demonstrating that the building meets one of the following  
31 criteria:

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

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

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

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

9 (v) The building is an agricultural structure; or

10 (vi) The building meets at least one of the following conditions  
11 of financial hardship: (A) The building had arrears of property taxes  
12 or water or wastewater charges that resulted in the building's  
13 inclusion, within the prior two years, on a city's or county's annual  
14 tax lien sale list; (B) the building has a court appointed receiver  
15 in control of the asset due to financial distress; (C) the building  
16 is owned by a financial institution through default by a borrower;  
17 (D) the building has been acquired by a deed in lieu of foreclosure  
18 within the previous (~~(twenty-four)~~) 24 months; (E) the building has a  
19 senior mortgage subject to a notice of default; or (F) other  
20 conditions of financial hardship identified by the department by  
21 rule.

22 (8) A building owner of a covered commercial building must meet  
23 the following reporting schedule for complying with the standard  
24 established under this section:

25 (a) For a building with more than (~~(two hundred twenty thousand)~~)  
26 220,000 gross square feet, June 1, 2026;

27 (b) For a building with more than (~~(ninety thousand)~~) 90,000  
28 gross square feet but less than (~~(two hundred twenty thousand and~~  
29 ~~one)~~) 220,001 gross square feet, June 1, 2027; and

30 (c) For a building with more than (~~(fifty thousand)~~) 50,000 gross  
31 square feet but less than (~~(ninety thousand and one)~~) 90,001 square  
32 feet, June 1, 2028.

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

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

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



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

3 (iv) Failure to provide a valid exemption certificate.

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

10 (10) The department is authorized to impose an administrative  
11 penalty upon a building owner for failing to submit documentation  
12 demonstrating compliance with the requirements of this section. The  
13 penalty may not exceed an amount equal to (~~five thousand dollars~~)  
14 \$5,000 plus an amount based on the duration of any continuing  
15 violation. The additional amount for a continuing violation may not  
16 exceed a daily amount equal to (~~one dollar~~) \$1 per year per gross  
17 square foot of floor area. The department may by rule increase the  
18 maximum penalty rates to adjust for the effects of inflation.

19 (11) Administrative penalties collected under this section must  
20 be deposited into the low-income weatherization and structural  
21 rehabilitation assistance account created in RCW 70A.35.030.

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

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

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

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

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

34 (14) By January 15, 2022, and each year thereafter through 2029,  
35 the department must submit a report to the governor and the  
36 appropriate committees of the legislature on the implementation of  
37 the state energy performance standard established under this section.  
38 The report must include information regarding the adoption of the  
39 ANSI/ASHRAE/IES standard 100-2018 as an initial model, the financial  
40 impact to building owners required to comply with the standard, the

1 amount of incentives provided under RCW 19.27A.220 and 19.27A.230,  
2 and any other significant information associated with the  
3 implementation of this section."

**2SHB 1390** - S COMM AMD

By Committee on Environment, Energy & Technology

**ADOPTED 04/12/2023**

4 On page 1, line 1 of the title, after "systems;" strike the  
5 remainder of the title and insert "amending RCW 19.27A.210; adding a  
6 new section to chapter 19.27A RCW; and creating a new section."

EFFECT: Directs the owner of a state campus district energy system to consult with the natural gas utility, as well as the electric utility, serving the site of the system during decarbonization plan development.

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