

**RCW 19.27A.210 State energy performance standard.** (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;

(e) Must provide an alternative compliance pathway for an owner of a state campus district energy system, in accordance with RCW 19.27A.260, and more broadly for the owner of any campus district energy system that is approved by the department to opt-in in accordance with RCW 19.27A.260(6);

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

(g) Must guarantee that a state campus district energy system, as defined in RCW 19.27A.260, and all buildings connected to a state campus district energy system, are in compliance with any requirements for campus buildings to implement energy efficiency measures identified by an energy audit if:

(i) The energy audit demonstrates the energy savings from the state campus district energy system energy efficiency measures will be greater than the energy efficiency measures identified for the campus buildings; and

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

(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) 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 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 12 months of the calendar year prior to the building owner compliance schedule established under subsection (8) of this section;

(ii) The building did not have an average physical occupancy of at least 50 percent throughout the calendar year prior to the building owner compliance schedule established under subsection (8) 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 50,000 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 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.

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

(a) For a building with more than 220,000 gross square feet, June 1, 2026;

(b) For a building with more than 90,000 gross square feet but less than 220,001 gross square feet, June 1, 2027; and

(c) For a building with more than 50,000 gross square feet but less than 90,001 square feet, June 1, 2028.

(9) (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) 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 \$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. The department may by rule increase the maximum penalty rates to adjust for the effects of inflation.

(11) 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) 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) 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) 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. [2023 c 291 § 3; 2021 c 65 § 19; 2019 c 285 § 3.]

**Findings—2023 c 291:** See note following RCW 19.27A.260.

**Explanatory statement—2021 c 65:** See note following RCW 53.54.030.

**Finding—Intent—2019 c 285:** "(1) The legislature finds that state policy encouraging energy efficiency has been extremely successful in reducing energy use, avoiding costly investment in new generating capacity, lowering customer energy bills, and reducing air pollution and greenhouse gas emissions. The state's 2019 biennial energy report indicates that utility conservation investments under chapter 19.285 RCW, the energy independence act, now save consumers more than seven hundred fifty million dollars annually, helping to keep Washington's electricity prices among the lowest in the nation.

(2) Studies by the Northwest power and conservation council and by individual Washington utilities repeatedly show that efficiency is the region's largest, cheapest, lowest risk energy resource; that without it, the Northwest would have needed to invest in additional natural gas-fired generation; and that, looking ahead, efficiency can approach the size of the region's hydropower system as a regional resource. The Northwest power and conservation council forecasts that

with an aggressive new energy efficiency policy, the region can potentially meet one hundred percent of its electricity load growth over the next twenty years with energy efficiency.

(3) Energy efficiency investments that reduce energy use in buildings bring cobenefits that directly impact Washingtonians' quality of life. These benefits include improved indoor air quality, more comfortable homes and workplaces, and lower tenant energy bills. The legislature notes that according to the United States department of energy's energy and employment report, 2017, the energy efficiency sector has created more than sixty-five thousand jobs in the state, more than two-thirds of which are in the construction sector, and that the number continues to grow.

(4) Considering the benefits of and the need for additional energy efficiency to meet regional energy demand, the legislature notes that attaining as much of this resource as possible from the buildings sector can have a significant effect on state greenhouse gas emissions by deferring or displacing the need for natural gas-fired electricity generation and reducing the direct use of natural gas. Buildings represent the second largest source of greenhouse gas emissions in Washington and emissions from the buildings sector have grown by fifty percent since 1990, far outpacing all other emission sources.

(5) The legislature therefore determines that it is in the state's interest to maximize the full potential of energy efficiency standards, retrofit incentives, utility programs, and building codes to keep energy costs low and to meet statutory goals for increased building efficiency and reduced greenhouse gas emissions.

(6) It is the intent of this act to provide incentives and regulations that encourage greater energy efficiency in all aspects of new and existing buildings, including building design, energy delivery, and utilization and operations. This act:

(a) Establishes energy performance standards for larger existing commercial buildings;

(b) Provides financial incentives and technical assistance for building owners taking early action to meet these standards before they are required to be met;

(c) Enhances access to commercial building energy consumption data in order to assist with monitoring progress toward meeting energy performance standards; and

(d) Establishes efficiency performance requirements for natural gas distribution companies, recognizing the significant contribution of natural gas to the state's greenhouse gas emissions, the role that natural gas plays in heating buildings and powering equipment within buildings across the state, and the greenhouse gas reduction benefits associated with substituting renewable natural gas for fossil fuels." [2019 c 285 § 1.]