

SENATE BILL REPORT

SB 5509

As Reported By Senate Committee On:
Water, Energy & Environment, March 1, 2005
Ways & Means, March 7, 2005

Title: An act relating to high-performance green buildings.

Brief Description: Requiring public buildings to be built using high-performance green building standards.

Sponsors: Senators Poulsen, Esser, Fraser, Schmidt, Pridemore, Fairley, Berkey, Kohl-Welles, Kline, Regala, Rockefeller, Weinstein, Brown, Keiser and McAuliffe.

Brief History:

Committee Activity: Water, Energy & Environment: 2/17/05, 3/1/05 [DPS-WM, DNP].
Ways & Means: 3/4/05, 3/7/05 [DP2S, DNP, w/oRec].

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 5509 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Pridemore and Regala.

Minority Report: Do not pass.

Signed by Senators Morton, Ranking Minority Member; Hewitt and Honeyford.

Staff: William Bridges (786-7424)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5509 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Doumit, Vice Chair; Fraser, Vice Chair; Fairley, Kohl-Welles, Rasmussen, Regala, Rockefeller and Thibaudeau.

Minority Report: Do not pass.

Signed by Senators Hewitt, Pflug, Roach and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Brandland and Parlette.

Staff: Richard Ramsey (786-7412)

Background: "Green building" is a term used to describe development and construction standards that promote environmental conservation. Introduced in 2000 by the U.S. Green

Building Council, LEED (Leadership in Energy and Environmental Design) provides national design-guidelines and a third-party certification tool for rating commercial green buildings.

LEED certification is voluntary and fee-based. It is based on a point system, focusing on six major areas: sustainable sites; water efficiency; energy and atmosphere; materials and resources; indoor environmental quality; and innovation and design process. LEED certification has four ranks: LEED Certified, LEED Silver, LEED Gold, and LEED Platinum.

In January 2003, the legislatively created Joint Task Force on Green Building recommended legislation to adopt LEED silver standards, or comparable design standards, for the state-funded construction or renovation of buildings. A House bill was introduced during the 2003 session, and reintroduced during the 2004 session, but it never received a hearing.

In January 2005, Governor Locke issued an executive order directing state agencies to incorporate green building practices in all new construction projects and major remodels over 25,000 gross square feet. LEED silver standard certification is required or an alternative equivalent certification as determined by the Department of General Administration (GA).

"Building commissioning" is the process of testing all the systems in a building to determine if they are installed and working properly and making the necessary corrections to assure all the building systems are performing efficiently. Current State Board of Education rules require school districts to perform building commissioning for projects greater than 50,000 square feet.

Summary of Second Substitute Bill: LEED silver certification required for projects funded in capital budget. All major facility projects funded in the capital budget, or projects financed through a financing contract as established in law, must be designed, constructed, and certified to at least the LEED silver standard, to the extent appropriate LEED silver standards exist for a project type. This requirement applies to any entity, including public agencies and public school districts, although the school districts may use the Washington Sustainable School Design Protocol.

Except for public school districts, the LEED standards apply to projects that enter into the design phase after the effective date of the act. School districts are subject to the following dates: July 1, 2006, for volunteering school districts; July 1, 2007, Class I school districts; and July 1, 2008, for Class II school districts.

Operational savings of LEED projects must be documented and reported. Public agencies and school districts must document and report the operational savings of their LEED projects. Public agencies must annually report to GA, while public school districts must annually report to the Office of the Superintendent of Public Instruction (OSPI). Starting on September 1, 2006, and each even-numbered year thereafter, GA and the OSPI must consolidate the individual reports into a single biennial report for the Governor and the Legislature. If applicable, the consolidated reports must explain why high performance building standards were not used on a project.

Administrative guidelines must be issued by GA and the State Board of Education. GA and the State Board of Education must issue guidelines for the public agencies affected by this act, and they must amend their fee schedules to accommodate the design standards required under this act.

An advisory committee is created. GA must create a high-performance buildings advisory committee to give advice on implementing this act. The committee must consist of representatives from the design and construction industry, affected public agencies, the State Board of Education, OSPI, and others at the GA's discretion. In addition, OSPI must use the school facilities advisory board as a high-performance buildings advisory committee.

Preproposal conferences and building commissioning are required. Requests for proposals on qualifying projects must provide for preproposal conferences to discuss the appropriate performance standards. Qualified major facility projects must include building commissioning as part of the construction process.

State Board of Education to adopt implementing rules. In adopting rules to implement this act, the State Board of Education must, among other things, review, and modify current rules concerning energy conservation in the design of public buildings.

Liability is limited. Members of design and construction teams who act in good faith are not liable for the failure of a major facility project to meet LEED standards.

Certain wood not recognized by LEED must be credited. GA must credit projects for using wood products with a credible third party sustainable forest certification or from forests regulated under the Washington Forest Practices Act.

Affordable housing is exempted from LEED standards. Affordable housing projects funded in the capital budget are exempt from LEED standards. By July 1, 2008, CTED must adopt and administer an existing sustainable building program for affordable housing. From 2009 to 2016, CTED must report to GA if the sustainable building standards are not used on a project.

JLARC to conduct performance review. JLARC must conduct a performance review of the high-performance building program, which must include identification of costs and savings. The committee must make a preliminary report of its findings and recommendations by December 1, 2010, and a final report by July 1, 2011.

Terms are defined. Various terms are defined, such as "Washington sustainable school design protocol," "major facility project," and "public agency." "Washington sustainable school design protocol" means the school design protocol developed by the State Board of Education and OSPI. "Major facility project" generally means: (1) a construction project larger than 5,000 gross square feet of occupied or conditioned space as defined in the Washington State Energy Code; and (2) a building renovation project when the cost is greater than 50 percent of the assessed value and the project is larger than 5,000 gross square feet of occupied or conditioned space as defined in the Washington State Energy Code. "Major facility project" does not include, among other things, hospitals, research facilities, and projects where it is determined that the LEED silver standard or the Washington sustainable school design protocol is not practicable. "Public agency" means every state office, officer, board, commission, committee, bureau, department, and public higher education institution.

Intent is established. Among other things, the Legislature finds that high-performance public buildings save money, improve school performance, and increase worker productivity. The legislature affirms the LEED program goal to increase the demand for locally extracted and manufactured building materials and products.

Second Substitute Bill Compared to Substitute Bill: Increases the threshold for complying with the LEED silver standard from 5,000 gross square feet to 25,000 gross square feet. Adds OFM and public school districts to the entities that determine whether applying the LEED silver standard or WA sustainable school design protocol is practicable. Adds "major capital project" pursuant to existing statute to projects requiring design and construction to the LEED silver standard. Adds reference to Washington state energy code for conditioned space for determining threshold for application of the LEED standard. Adds "research facilities" to the exclusion from the LEED silver standard. Expands to the requirement of projects funded in the capital budget those that are financed through financing contracts or certificates of participation. Requires that in their reports to the Governor and Legislature, GA and OSPI include why the LEED standard or the WA sustainable school design protocol were not followed. Adds an intent section affirming the LEED program goal to increase demand for locally extracted and manufactured building materials and products.

Substitute Bill Compared to Original Bill: Definitions of "high performance public buildings," "institutions of higher education," and "Washington sustainable school design protocol" are added. Definitions of "comparable design standard" and "public higher education institution" are deleted. Certain definitions are amended, including "major facility project." Mandatory LEED requirements are modified to allow consideration of appropriateness and practicability. School districts are allowed to follow Washington sustainable school design protocol. Effective dates for school districts are postponed. Members of design and construction industry are added to the GA's high performance advisory committee. OSPI is required to use the school facilities advisory board as a high-performance buildings advisory committee. GA and OSPI are required to report to legislative fiscal committees. GA and OSPI are required to summarize and submit reports to the legislative capital budget and Ways & Means committees. State Board of Education is required to review and modify current rules, including those concerning energy conservation in the design of public buildings. Liability is limited for members of design and construction teams. Preproposal conferences and building commissioning are required. Credit for certain wood not recognized by LEED is required. Affordable housing is exempted from LEED requirements. JLARC review is required.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For (Water, Energy & Environment): High performance buildings are good for business because they are cheaper to operate and because employees in these buildings are healthier and more productive. High performance buildings are good for education because they help students get better grades. High performance buildings are good for the timber industry because they promote the use of home-grown lumber. According to OSPI, high performance school buildings save water and energy, increase student performance, lower absenteeism, increase teacher retention, and result in a 150 percent rate of return in investment. A broad coalition of builders, architects, schools, and environmentalists support the moderate, measured steps in this bill. The bill does not discriminate against Washington

timber; it actually encourages the use of Washington wood products, particularly in eastern Washington. LEED is a national system that is reasonable and affordable; it is widely recognized by architects. LEED is ambitious but achievable. LEED is the most significant trend in architecture today; it represents the best in building design, construction, and operation. LEED standards emphasize fresh clean air, natural light, low toxins, and clean storm water. Spokane will use LEED standards in the expansion of its convention center. The bill promotes energy independence. LEED standards promote healthy working conditions for construction workers. GA is concerned that 5,000 square feet is too small to require LEED silver certification. GA would like some flexibility in providing for equivalent green-building standards. GA also notes that it will need an additional 1.5 FTEs to assume its duties under the bill.

Testimony Against (Water, Energy & Environment): LEED penalizes good behavior and discriminates against forest products. Under LEED, credits for wood products are more difficult to obtain than for other materials. LEED favors steel and concrete with recycling credits. LEED only favors wood certified by the Forest Stewardship Council, and it does not recognize the Washington Forest Practices Act. LEED also favors short-rotation trees, such as eucalyptus, over the long-rotation trees found in the northern hemisphere. Like Gov. Locke's 2005 executive order, the bill should be amended to recognize the sustainable forestry practices in Washington. "Green" is often a clever advertising gimmick for steel, plastic, or concrete, all of which are not as good for the environment as renewable wood products. To the extent that wood does not automatically get the highest environmental ratings under the LEED system, it must be assumed that the standards are not based on valid life cycle analyses. Estimates of initial costs to meet LEED standards are underestimated, while promises of energy savings are sometimes overstated. LEED standards may encourage the loss of local jobs by using a standard that allows outsourcing. LEED includes some environmental standards that may actually increase the impact on the environment.

Who Testified (Water, Energy & Environment): PRO: Sen. Poulsen, prime sponsor; William Panos, OSPI; Clifford Traisman, WA Environmental Council & WA Conservation Voters; Stan Bowman, American Institute of Architects; Cliff Webster, Architects and Engineers Legislative Council; Bert Gregory, Mithun Architects, Designers, and Planners; Mark Huppert, Catapult Development; Tom Parker, Spokane Public Facilities District; Miebeth Bustillo-Booth, WEA; Ed Peters, Council for Educational Facilities Council; Rich Feldman, Apollo Washington; Mitch Seaman, WA Building & Construction Council; Steve George, Resource Efficient Building and Remodeling Council (REBAR).

CON: Bill Garvin, WA Forest Protection Assn.; Bill Stauffacher, American Forest & Paper Assn.; Kent Sprague, wood working machinists.

Signed in, Unable to Testify & Submitted Written Testimony: CON: Ken Miller, Wash. Farm Forestry Assn. OTHER: Grant Fredericks, Dept. of General Administration; Terry Teale, Council of Presidents; Daniel Mead-Smith, WA Policy Center.

Testimony For (Ways & Means): The Office of Financial Management should be added to the process prescribed in this bill. Decisions about whether to pursue LEED certification should be part of the pre-design analysis. The threshold for applying the LEED silver standard should be increased from 5,000 gross square feet of occupied space to 25,000 gross square

feet. An exemption should be added for research facilities primarily used for sponsored laboratory research. WSU currently seeks LEED certified standard and is willing to go to LEED silver, with the recognition that there will be increased costs.

Employing higher performance building standards increases test scores. Concerns previously expressed by timberland owners have been addressed.

These practices will have a positive effect on indoor environments. The ongoing savings exceed the up-front costs. The timetable to apply high performance building standards to low income housing is appropriate.

Testimony Against (Ways & Means): These requirements will drive up the cost of schools at the front end with no tie to specific funding in the capital budget. Assuming the experience in the Bethel school district, in which green practices cost 4.29% of the total cost, applies statewide requires \$23 million be set-aside to fund the state match on school projects.

Who Testified (Ways & Means): PRO: Representative Hans Dunshee, prime sponsor of the House companion bill; Clifford Traisman, WA Environmental Council and WA Conservation Voters; Cliff Webster, Architects and Engineers Legislative Council; Nick Federici, American Lung Association.

PRO with concerns: Edie Harding, The Evergreen State College; Randy Hodgins, UW; Larry Ganders, WSU.

Concerns: Charlie Brown, King and Pierce County School Coalitions.