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SECOND SUBSTITUTE SENATE BILL 5509

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State of Washington

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2005 Regular Session

**By** Senate Committee on Ways & Means (originally sponsored by Senators Poulsen, Esser, Fraser, Schmidt, Pridemore, Fairley, Berkey, Kohl-Welles, Kline, Regala, Rockefeller, Weinstein, Brown, Keiser and McAuliffe)

READ FIRST TIME 03/08/05.

1 AN ACT Relating to high-performance green buildings; adding new  
2 sections to chapter 28A.150 RCW; adding a new section to chapter 28B.10  
3 RCW; adding a new section to chapter 39.04 RCW; and adding a new  
4 chapter to Title 39 RCW.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that public  
7 buildings can be built and renovated using high-performance methods  
8 that save money, improve school performance, and make workers more  
9 productive. High-performance public buildings are proven to increase  
10 student test scores, reduce worker absenteeism, and cut energy and  
11 utility costs.

12 (2) It is the intent of the legislature that state-owned buildings  
13 and schools be improved by adopting recognized standards for high-  
14 performance public buildings and allowing flexible methods and choices  
15 in how to achieve those standards. The legislature also intends that  
16 public agencies and public school districts shall document costs and  
17 savings to monitor this program and ensure that economic, community,  
18 and environmental goals are achieved each year, and that an independent

1 performance review be conducted to evaluate this program and determine  
2 the extent to which the results intended by this chapter are being met.

3 NEW SECTION. **Sec. 2.** The definitions in this section apply  
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Department" means the department of general administration.

6 (2) "High-performance public buildings" means high-performance  
7 public buildings designed, constructed, and certified to a standard as  
8 identified in this chapter.

9 (3) "Institutions of higher education" means the state  
10 universities, the regional universities, The Evergreen State College,  
11 the community colleges, and the technical colleges.

12 (4) "LEED silver standard" means the United States green building  
13 council leadership in energy and environmental design green building  
14 rating standard, referred to as silver standard.

15 (5) "Major capital construction project" means a new construction  
16 project or major renovation project over five million dollars as  
17 defined in RCW 43.88.110.

18 (6)(a) "Major facility project" means: (i) A construction project  
19 that does not meet the definition of a major capital construction  
20 project and that is larger than twenty-five thousand gross square feet  
21 of occupied or conditioned space as defined in the Washington state  
22 energy code; or (ii) a building renovation project that does not meet  
23 the definition of a major capital construction project when the cost is  
24 greater than fifty percent of the assessed value and the project is  
25 larger than twenty-five thousand gross square feet of occupied or  
26 conditioned space as defined in the Washington state energy code.

27 (b) "Major facility project" does not include: (i) Projects for  
28 which the department, public school district, the office of financial  
29 management, or other applicable agency and the design team determine  
30 the LEED silver standard or the Washington sustainable school design  
31 protocol to be not practicable; or (ii) transmitter buildings, pumping  
32 stations, hospitals, research facilities primarily used for sponsored  
33 laboratory experimentation, laboratory research, or laboratory training  
34 in research methods, or other similar building types as determined by  
35 the department or the office of financial management. When the LEED  
36 silver standard is determined to be not practicable for a project, then  
37 it must be determined if any LEED standard is practicable for the

1 project. If LEED standards or the Washington sustainable school design  
2 protocol are not followed for the project, the public school district  
3 or public agency shall report these reasons to the department.

4 (7) "Public agency" means every state office, officer, board,  
5 commission, committee, bureau, department, and public higher education  
6 institution.

7 (8) "Public school district" means a school district eligible to  
8 receive state basic education moneys pursuant to RCW 28A.150.250 and  
9 28A.150.260.

10 (9) "Washington sustainable school design protocol" means the  
11 school design protocol and related information developed by the state  
12 board of education and the office of the superintendent of public  
13 instruction, in conjunction with school districts and the school  
14 facilities advisory board.

15 NEW SECTION. **Sec. 3.** (1) All major capital construction projects  
16 and all major facility projects of public agencies receiving any  
17 funding in a state capital budget, or projects financed through a  
18 financing contract as defined in RCW 39.94.020, must be designed,  
19 constructed, and certified to at least the LEED silver standard. This  
20 subsection applies to major facility projects that have not entered the  
21 design phase prior to the effective date of this section and to the  
22 extent appropriate LEED silver standards exist for that type of  
23 building or facility.

24 (2) All major facility projects of any entity other than a public  
25 agency or public school district receiving any funding in a state  
26 capital budget must be designed, constructed, and certified to at least  
27 the LEED silver standard. This subsection applies to major facility  
28 projects that have not entered the grant application process prior to  
29 the effective date of this section and to the extent appropriate LEED  
30 silver standards exist for that type of building or facility.

31 (3)(a) Public agencies, under this section, shall monitor and  
32 document ongoing operating savings resulting from major facility  
33 projects designed, constructed, and certified as required under this  
34 section.

35 (b) Public agencies, under this section, shall report annually to  
36 the department on major facility projects and operating savings.

1           (4) The department shall consolidate the reports required in  
2 subsection (3) of this section into one report and report to the  
3 governor and legislature by September 1st of each even-numbered year  
4 beginning in 2006 and ending in 2016. In its report, the department  
5 shall also report on the implementation of this chapter, including  
6 reasons why the LEED standard was not used as required by section  
7 2(6)(b) of this act. The department shall make recommendations  
8 regarding the ongoing implementation of this chapter, including a  
9 discussion of incentives and disincentives related to implementing this  
10 chapter.

11           NEW SECTION.   **Sec. 4.** (1) All major facility projects of public  
12 school districts receiving any funding in a state capital budget must  
13 be designed and constructed to at least the LEED silver standard or the  
14 Washington sustainable school design protocol. To the extent  
15 appropriate LEED silver or Washington sustainable school design  
16 protocol standards exist for the type of building or facility, this  
17 subsection applies to major facility projects that have not received  
18 project approval from the superintendent of public instruction prior  
19 to: (a) July 1, 2006, for volunteering school districts; (b) July 1,  
20 2007, for class one school districts; and (c) July 1, 2008, for class  
21 two school districts.

22           (2) Public school districts under this section shall: (a) Monitor  
23 and document appropriate operating benefits and savings resulting from  
24 major facility projects designed and constructed as required under this  
25 section for a minimum of five years following local board acceptance of  
26 a project receiving state funding; and (b) report annually to the  
27 superintendent of public instruction. The form and content of each  
28 report must be mutually developed by the office of the superintendent  
29 of public instruction in consultation with school districts.

30           (3) The superintendent of public instruction shall consolidate the  
31 reports required in subsection (2) of this section into one report and  
32 report to the governor and legislature by September 1st of each even-  
33 numbered year beginning in 2006 and ending in 2016. In its report, the  
34 superintendent of public instruction shall also report on the  
35 implementation of this chapter, including reasons why the LEED standard  
36 or Washington sustainable school design protocol was not used as  
37 required by section 2(6)(b) of this act. The superintendent of public

1 instruction shall make recommendations regarding the ongoing  
2 implementation of this chapter, including a discussion of incentives  
3 and disincentives related to implementing this chapter.

4 (4) The state board of education, in consultation with the  
5 superintendent of public instruction, shall develop and issue  
6 guidelines for administering this chapter for public school districts.  
7 The purpose of the guidelines is to define a procedure and method for  
8 employing and verifying compliance with the LEED silver standard or the  
9 Washington sustainable school design protocol.

10 (5) The superintendent of public instruction shall utilize the  
11 school facilities advisory board as a high-performance buildings  
12 advisory committee comprised of affected public schools, the state  
13 board of education, the superintendent of public instruction, the  
14 department, and others at the superintendent of public instruction's  
15 discretion to provide advice on implementing this chapter. Among other  
16 duties, the advisory committee shall make recommendations regarding an  
17 education and training process and an ongoing evaluation or feedback  
18 process to help the superintendent of public instruction and the state  
19 board of education implement this chapter.

20 NEW SECTION. **Sec. 5.** On or before January 1, 2009, the department  
21 and the superintendent of public instruction shall summarize the  
22 reports submitted under sections 3(4) and 4(3) of this act and submit  
23 the individual reports to the legislative committees on capital budget  
24 and ways and means for review of the program's performance and  
25 consideration of any changes that may be needed to adapt the program to  
26 any new or modified standards for high-performance buildings that meet  
27 the intent of this chapter.

28 NEW SECTION. **Sec. 6.** (1)(a) The department, in consultation with  
29 affected public agencies and the office of financial management, shall  
30 develop and issue guidelines for administering this chapter for public  
31 agencies. The purpose of the guidelines is to define a procedure and  
32 method for employing and verifying activities necessary for  
33 certification to at least the LEED silver standard for major facility  
34 projects.

35 (b) The department and the office of the superintendent of public

1 instruction shall amend their fee schedules for architectural and  
2 engineering services to accommodate the requirements in the design of  
3 major facility projects under this chapter.

4 (c) The department and the office of the superintendent of public  
5 instruction shall procure architecture and engineering services  
6 consistent with chapter 39.80 RCW.

7 (d) Major capital construction projects and all major facility  
8 projects designed to meet standards identified in this chapter must  
9 include building commissioning as a critical cost-saving part of the  
10 construction process. This process includes input from the project  
11 design and construction teams and the project ownership  
12 representatives.

13 (e) As provided in the request for proposals for construction  
14 services, the operating agency shall hold a preproposal conference for  
15 prospective bidders to discuss compliance with and achievement of  
16 standards identified in this chapter for prospective respondents.

17 (2) The department shall create a high-performance buildings  
18 advisory committee comprised of representatives from the design and  
19 construction industry involved in public works contracting, personnel  
20 from the affected public agencies responsible for overseeing public  
21 works projects, the state board of education, the office of the  
22 superintendent of public instruction, and others at the department's  
23 discretion to provide advice on implementing this chapter. Among other  
24 duties, the advisory committee shall make recommendations regarding an  
25 education and training process and an ongoing evaluation or feedback  
26 process to help the department implement this chapter.

27 (3) The department and the state board of education shall adopt  
28 rules to implement this section.

29 NEW SECTION. **Sec. 7.** A new section is added to chapter 28A.150  
30 RCW to read as follows:

31 (1) In adopting implementation rules, the state board of education,  
32 in consultation with the superintendent of public instruction and the  
33 department of general administration, shall review and modify the  
34 current requirement for an energy conservation report review by the  
35 department of general administration as provided in WAC 180-27-075.

36 (2) In adopting implementation rules, the state board of education,  
37 in consultation with the superintendent of public instruction shall:

1 (a) Review and modify the current requirements for value  
2 engineering, constructability review, and building commissioning as  
3 provided in WAC 180-27-080;

4 (b) Review private and public utility providers' capacity and  
5 financial/technical assistance programs for affected public school  
6 districts to monitor and report utility consumption for purposes of  
7 reporting to the superintendent of public instruction as provided in  
8 section 4 of this act;

9 (c) Coordinate with the department of general administration, the  
10 state board of health, the department of ecology, federal agencies, and  
11 other affected agencies as appropriate in their consideration of rules  
12 to implement this section.

13 NEW SECTION. **Sec. 8.** A new section is added to chapter 28B.10 RCW  
14 to read as follows:

15 Institutions of higher education must comply with high-performance  
16 public building requirements under sections 1 through 3 and 6 of this  
17 act.

18 NEW SECTION. **Sec. 9.** A new section is added to chapter 28A.150  
19 RCW to read as follows:

20 Public school districts must comply with high-performance public  
21 building requirements under sections 1, 2, 4, 6, and 7 of this act.

22 NEW SECTION. **Sec. 10.** A member of the design or construction  
23 teams may not be held liable for the failure of a major facility  
24 project to meet the LEED silver standard or other LEED standard  
25 established for the project as long as a good faith attempt was made to  
26 achieve the LEED standard set for the project.

27 NEW SECTION. **Sec. 11.** A new section is added to chapter 39.04 RCW  
28 to read as follows:

29 For purposes of determining compliance with chapter 39.-- RCW  
30 (sections 1 through 6, 10, and 12 through 14 of this act), the  
31 department of general administration shall credit the project for using  
32 wood products with a credible third party sustainable forest  
33 certification or from forests regulated under chapter 76.09 RCW, the  
34 Washington forest practices act.

1        NEW SECTION.    **Sec. 12.** Except as provided in this section,  
2 affordable housing projects funded out of the state capital budget are  
3 exempt from the provisions of this chapter. On or before July 1, 2008,  
4 the department of community, trade, and economic development shall  
5 identify, implement, and apply a sustainable building program for  
6 affordable housing projects that receive housing trust fund (under  
7 chapter 43.185 RCW) funding in a state capital budget. The department  
8 of community, trade, and economic development shall not develop its own  
9 sustainable building standard, but shall work with stakeholders to  
10 adopt an existing sustainable building standard or criteria appropriate  
11 for affordable housing. Any application of the program to affordable  
12 housing, including any monitoring to track the performance of either  
13 sustainable features or energy standards or both, is the responsibility  
14 of the department of community, trade, and economic development.  
15 Beginning in 2009 and ending in 2016, the department of community,  
16 trade, and economic development shall report to the department as  
17 required under section 3(3)(b) of this act.

18        NEW SECTION.    **Sec. 13.** It is the intent and an established goal of  
19 the LEED program as authored by the United States green building  
20 council to increase demand for building materials and products that are  
21 extracted and manufactured locally, thereby reducing the environmental  
22 impacts and to support the local economy. Therefore, it is the intent  
23 of the legislature to emphasize this defined goal and establish a  
24 priority to use Washington state based resources, building materials,  
25 products, industries, manufacturers, and other businesses to provide  
26 economic development to Washington state and to meet the objectives of  
27 this chapter.

28        NEW SECTION.    **Sec. 14.** The joint legislative audit and review  
29 committee, or its successor legislative agency, shall conduct a  
30 performance review of the high-performance buildings program  
31 established under this chapter.

32        (1) The performance audit shall include, but not be limited to:

33        (a) The identification of the costs of implementation of high-  
34 performance building standards in the design and construction of major  
35 facility projects subject to this chapter;



1 (b) The identification of operating savings attributable to the  
2 implementation of high-performance building standards, including but  
3 not limited to savings in energy, utility, and maintenance costs;

4 (c) The identification of any impacts of high-performance buildings  
5 standards on worker productivity and student performance; and

6 (d) An evaluation of the effectiveness of the high-performance  
7 building standards established under this chapter, and recommendations  
8 for any changes in those standards that may be supported by the  
9 committee's findings.

10 (2) The committee shall make a preliminary report of its findings  
11 and recommendations on or before December 1, 2010, and a final report  
12 on or before July 1, 2011.

13 NEW SECTION. **Sec. 15.** Sections 1 through 6, 10, and 12 through 14  
14 of this act constitute a new chapter in Title 39 RCW.

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