

HOUSE BILL REPORT

E3SHB 1257

As Passed House:
March 29, 2019

Title: An act relating to energy efficiency.

Brief Description: Concerning energy efficiency.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Doglio, Tarleton, Lekanoff, Fitzgibbon, Dolan, Fey, Mead, Peterson, Kloba, Riccelli, Macri, Hudgins, Morris, Stanford, Appleton, Slatter, Tharinger, Jinkins, Pollet and Goodman; by request of Governor Inslee).

Brief History:

Committee Activity:

Environment & Energy: 1/29/19, 2/14/19 [DPS];
Finance: 2/25/19, 2/27/19 [DP2S(w/o sub ENVI)];
Appropriations: 2/28/19, 3/18/19 [DP3S(w/o 2 sub FIN)].

Floor Activity:

Passed House: 3/29/19, 55-37.

Brief Summary of Engrossed Third Substitute Bill

- Requires the State Building Code Council to develop rules for electric vehicle infrastructure that require electric vehicle charging capability at all new buildings that provide on-site parking.
- Requires the Department of Commerce (Department) to establish a State Energy Performance Standard for covered commercial buildings by November 1, 2020.
- Requires the Department to establish a State Energy Performance Standard Early Adoption Incentive Program.
- Establishes energy benchmarking requirements for covered commercial buildings.
- Establishes a Natural Gas Conservation Standard.
- Authorizes a gas company to propose a renewable natural gas program.
- Requires each gas company to offer by tariff a voluntary renewable natural gas service available to all customers.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Establishes a societal cost of greenhouse gas emissions for the purposes of the Natural Gas Conservation Standard.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Doglio, Fey, Mead, Peterson and Shewmake.

Minority Report: Do not pass. Signed by 3 members: Representatives Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke.

Minority Report: Without recommendation. Signed by 1 member: Representative DeBolt.

Staff: Nikkole Hughes (786-7156).

HOUSE COMMITTEE ON FINANCE

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment & Energy. Signed by 8 members: Representatives Tarleton, Chair; Walen, Vice Chair; Chapman, Frame, Macri, Morris, Orwall and Wylie.

Minority Report: Do not pass. Signed by 4 members: Representatives Orcutt, Ranking Minority Member; Young, Assistant Ranking Minority Member; Stokesbary and Vick.

Minority Report: Without recommendation. Signed by 1 member: Representative Springer.

Staff: Tracey O'Brien (786-7152).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The third substitute bill be substituted therefor and the third substitute bill do pass and do not pass the second substitute bill by Committee on Finance. Signed by 17 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Ryu, Senn, Springer, Stanford, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 13 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff, Kraft, Mosbrucker, Schmick, Steele, Sutherland and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Volz.

Staff: Meghan Morris (786-7119).

Background:

State Energy Code.

The State Energy Code (Code) is part of the State Building Code, which sets the minimum construction requirements for buildings in the state. The Code provides a maximum and minimum level of energy efficiency for residential buildings and the minimum level of energy efficiency for nonresidential buildings. The State Building Code Council (Council) maintains the Code. Unless otherwise amended by rule, the Code must reflect the 2006 edition.

The Council reviews, updates, and adopts model state building codes every three years. The Code must be designed to:

- construct increasingly energy efficient homes and buildings that help achieve the broader goal of building zero fossil-fuel greenhouse gas (GHG) emission homes and buildings by the year 2031;
- require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework; and
- allow space heating equipment efficiency to offset or substitute for building envelope thermal performance.

The Council must adopt state energy codes that require buildings constructed from 2013 through 2031 to move incrementally toward a 70 percent reduction in energy use by 2031. The Code must consider regional climatic conditions. The Council may amend the Code by rule if the amendments increase energy efficiency in the affected buildings.

Building Requirements for Electric Vehicle Infrastructure.

The Council must adopt rules for electric vehicle infrastructure requirements. Rules adopted by the Council must consider applicable national and international standards.

Energy Benchmarking Requirements.

An electric or gas utility that serves more than 25,000 customers in the state must maintain records of the energy consumption data of all nonresidential and certain public agency buildings to which the utility provides service. This data must be maintained in a format that is compatible with the United States Environmental Protection Agency's Energy Star Portfolio Manager, which is an Internet-based program that allows users to track their energy consumption data and to benchmark the energy use of their buildings against comparable buildings.

Department of Commerce.

The Department of Commerce must develop and implement a strategic plan for enhancing energy efficiency in and reducing GHG emissions from homes, buildings, districts, and neighborhoods. The strategic plan must be used to help direct the Code in achieving the goal of building zero fossil-fuel GHG emission homes and buildings by the year 2031. The strategic plan must identify barriers to achieving net zero energy use in homes and buildings and identify how to overcome these barriers in future Code updates and through

complementary policies.

Utilities and Transportation Commission.

The Utilities and Transportation Commission (UTC) regulates the rates, services, and practices of investor-owned utilities and transportation companies, including electrical companies, natural gas companies, and telecommunications companies. The UTC is required to ensure that rates charged by these companies are "fair, just, reasonable, and sufficient."

Summary of Engrossed Third Substitute Bill:

Building Requirements for Electric Vehicle Infrastructure.

The State Building Code Council (Council) must develop rules for electric vehicle infrastructure that require electric vehicle charging capability at all new buildings that provide on-site parking. Where parking is provided, the greater of one parking space or 10 percent of parking spaces, rounded to the next whole number, must be provided with wiring or raceway size to accommodate 208/240 V 40-amp or equivalent electric vehicle charging. Electrical rooms serving buildings with on-site parking must be sized to accommodate the potential for electrical equipment and distribution required to serve a minimum of 50 percent of the total parking spaces with 208/240 V 40-amp or equivalent electric vehicle charging. Load management infrastructure may be used to adjust the size and capacity of the required building electric service equipment and circuits on the customer facilities, as well as electric utility owned infrastructure, as allowed by applicable local and national electrical code. For accessible parking spaces, the greater of one parking space or 10 percent of accessible parking spaces, rounded to the next whole number, must be provided with electric vehicle charging infrastructure that may also serve adjacent parking spaces not designated as accessible parking.

For occupancies classified as assembly or mercantile, the requirements for electric vehicle charging capability apply only to employee parking spaces. The requirements do not apply to occupancies classified as residential R-3, utility, or miscellaneous.

State Energy Performance Standard.

By November 1, 2020, the Department of Commerce (Department) must establish by rule a State Energy Performance Standard (Standard) for covered commercial buildings. "Covered commercial building" means a building where the sum of nonresidential, hotel, motel, and dormitory floor areas exceeds 50,000 gross square feet, excluding the parking garage area. The Department must provide the owners of covered buildings with notification of compliance requirements no later than July 1, 2021.

In developing the Standard, the Department must seek to maximize reductions in greenhouse gas (GHG) 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 investments in energy efficiency measures designed to meet the targets. 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.

A building owner of a covered commercial building must meet the following compliance schedule:

- June 1, 2026, for a building with more than 220,000 gross square feet;
- June 1, 2027, for a building with more than 90,000 gross square feet but less than 220,001 gross square feet; and
- June 1, 2028, for a building with more than 50,000 gross square feet but less than 90,001 gross square feet.

A covered commercial building is exempt from the Standard if it meets at least one of several listed criteria, including:

- 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;
- the building is an agricultural structure; or
- the primary use of the building is manufacturing or other industrial purposes.

The Department may impose an administrative penalty upon a building owner for failing to submit documentation demonstrating compliance with the requirements of the Standard. The penalty may not exceed \$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 adjust the maximum penalty rates for inflation.

When requested to do so by the building owner or the building owner's agent, the Department must reply and cite the section of law, code, or standard in a notice of violation for noncompliance with the requirements of the Standard.

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 Standard.

State Energy Performance Standard Early Adoption Incentive Program.

The Department must establish a State Energy Performance Standard Early Adoption Incentive Program (Incentive Program).

An eligible building owner may submit an application to the Department for an incentive payment in a form and manner prescribed by the Department. The application must be submitted in accordance with the following schedule:

- beginning July 1, 2021, through June 1, 2025, for a building with more than 220,000 gross square feet;
- beginning July 1, 2021, through June 1, 2026, for a building with more than 90,000 gross square feet but less than 220,001 gross square feet; and
- beginning July 1, 2021, through June 1, 2027, for a building with more than 50,000 gross square feet but less than 90,001 gross square feet.

An eligible building owner that demonstrates early compliance with the applicable energy use intensity target under the Standard may receive a base incentive payment of \$0.85 per square foot of floor area, excluding parking, unconditioned, or semi-conditioned spaces.

The Department may not issue a certification for an incentive application to an eligible building owner if doing so is likely to result in total incentive payments in excess of \$75 million.

Each qualifying utility must administer incentive payments for the Incentive Program. Any thermal energy company, electric utility, or gas company not otherwise required to administer incentive payments may voluntarily participate by providing notice to the Department in a form and manner prescribed by the Department.

Upon receiving notification from the Department that a building owner has qualified for an incentive payment, each entity that administers incentive payments must make incentive payments to its customers who are eligible building owners of covered commercial buildings or multifamily residential buildings who qualify for the Incentive Program. When a building is served by more than one entity administering incentive payments, incentive payments must be proportional to the energy use intensity reduction of the participating entities' fuel.

A light and power business or a gas distribution business that participates in the Incentive Program is allowed a credit against its public utility tax (PUT) obligation in an amount equal to:

- incentive payments made in any calendar year in accordance with the Incentive Program; and
- documented administrative costs not to exceed 5 percent of the incentive payments.

The PUT credit expires June 30, 2032.

If a review by the Joint Legislative Audit and Review Committee finds that measurable energy savings has increased in covered commercial buildings for which building owners are receiving an incentive payment from a qualifying utility, then the Legislature intends to extend the expiration date of the PUT credit.

Energy Benchmarking Requirements.

An electric or gas utility that is not a qualifying utility must either offer the upload service to the United States Environmental Protection Agency's Energy Star Portfolio Manager (Portfolio Manager) or provide customers who are building owners of covered commercial buildings with consumption data in an electronic document formatted for direct upload to the Portfolio Manager. Within 60 days of receiving a written or electronic request and authorization of a building owner, the utility must provide the building owner with monthly energy consumption data as required to benchmark the specified building.

For any covered commercial building with three or more tenants, an electric or gas utility that is not a qualifying utility must, upon request of the building owner, provide the building owner with aggregated monthly energy consumption data without requiring prior consent from tenants.

Electric and gas utilities must ensure that all data provided in compliance with energy benchmarking requirements does not contain personally identifiable information or customer-specific billing information about tenants of a covered commercial building.

Natural Gas Conservation Standard and Renewable Natural Gas Programs.

Each gas company must identify and acquire all conservation measures that are available and cost-effective. Each company must establish an acquisition target every two years and must demonstrate that the target will result in the acquisition of all resources identified as available and cost-effective. The cost-effectiveness analysis must include the societal costs of GHG emissions. The targets must be based on a conservation potential assessment prepared by an independent third party and approved by the Utilities and Transportation Commission (UTC). Conservation targets must be approved by order of the UTC. The initial conservation target must take effect by 2022.

A gas company may propose a renewable natural gas program under which the company would supply renewable natural gas for a portion of the natural gas sold or delivered to its retail customers. The renewable natural gas program is subject to review and approval by the UTC. The customer charge for a renewable natural gas program may not exceed 5 percent of the amount charged to retail customers for natural gas. The environmental attributes of renewable natural gas must be retired using procedures established by the UTC and may not be used for any other purpose. The UTC must approve procedures for banking and transfer of environmental attributes.

Each gas company must offer by tariff a voluntary renewable natural gas service available to all customers to replace any portion of the natural gas that would otherwise be provided by the gas company. The tariff may provide reasonable limits on participation based on the availability of renewable natural gas and may use environmental attributes of renewable natural gas combined with natural gas. The voluntary renewable natural gas service must include delivery to, or the retirement on behalf of, the customer of an environmental attributes associated with the renewable natural gas.

"Renewable natural gas" means a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.

Societal Costs of Greenhouse Gas Emissions.

For the Natural Gas Conservation Standard, the cost of GHG emissions resulting from the use of natural gas, including the effect of emissions occurring in the gathering, transmission, and distribution of natural gas to the end user, is equal to the cost per metric ton of carbon dioxide emissions, using the 2.5 percent discount rate, listed in Table 2, Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866, published by the Interagency Working Group on Social Cost of Greenhouse Gases of the United States Government, August 2016. The UTC must adjust the cost to reflect the effect of inflation.

The UTC must monitor the GHG emissions resulting from natural gas and renewable natural gas delivered by each gas company to its customers, relative to the proportionate share of the state's GHG emissions reduction goal. The UTC must report to the Governor by January 1, 2020, and every three years thereafter, an assessment of whether the gas companies are on track to meet a proportionate share of the state's GHG emission reduction goal.

Appropriation: None.

Fiscal Note: Requested March 29, 2019.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Environment & Energy):

(In support) Energy efficiency brings a host of co-benefits, including health benefits. Energy efficiency is the cheapest way to achieve greenhouse gas (GHG) reductions. This bill will help the state achieve its statutory GHG emissions reduction targets. Buildings are responsible for much of the energy consumption in the state and account for about 20 percent of the state's emissions. This bill looks holistically at building energy efficiency. The State Energy Performance Standard Early Adoption Incentive Program (Incentive Program) is the cornerstone of the program and would help building owners attain compliance with the new buildings standard. The cheapest energy is the energy you do not use. Improving buildings efficiency will allow for the accommodation of new electric load brought on by transportation electrification. Buildings are assets that are around for a very long time, so it is essential for new buildings to be constructed as efficiently as possible and for old buildings to become more efficient. The Legislature has not enacted building efficiency legislation since 2009. This bill addresses large existing commercial buildings and how building owners can reduce their energy use. This policy takes a considered view and provides flexibility and support to building owners. The benchmarking provisions in this bill should be expanded to include residential buildings. The utilities have all of this data. This kind of data drives market value.

(Opposed) Natural gas companies are already investing in conservation. Allowing local governments to adopt more efficient codes will make homes more expensive. The building industry is already making tremendous progress toward achieving the 2031 goal for the state energy code. If local jurisdictions adopted different codes, builders would have to purchase different building materials for each one.

(Other) Building emissions are going up and this bill is a great step in trying to address that. However, that is not due to increased natural gas emissions. Natural gas helps reduce GHG emissions in the state. Building incentives need to match utility credit. Investor-owned gas companies are already doing natural gas conservation. Renewable natural gas accessibility and market maturity is an issue. This bill should address natural gas transport customers. The new standard established in this bill will require extensive deliberations. The bill should require an extensive pre-rules stakeholder process and a report back to the Legislature. This bill represents a departure from typical building code policies, which are prospective. The right balance needs to be found in developing these new policies.

Staff Summary of Public Testimony (Finance):

(In support) Many businesses and cities have their own energy performance measures and this legislation is crucial to meeting these goals. Energy accounts for 51 percent of a hospital's operating costs. This legislation is part of the Governor's sector by sector plan to

reach the 2035 targets with the \$75 million early incentive plan being one of the largest pieces of the plan. This legislation provides for investments that will pay for themselves in the lifetime of the new installations and has exemptions for economic hardship and low occupancy. The delay in the effective date allows for building owners to take advantage of turnover and repairs in making the changes to meet standards. This legislation is a tremendous opportunity to have cleaner buildings, a better environment, and a higher quality of life. The residential provisions in section 19 will allow for statewide consistency in energy efficient home standards.

(Opposed) The residential stretch codes in sections 18 and 19 are really a mandate on the State Building Code Council (Council). The fee funding the Council was just increased to fund their current workload. This bill would increase the costs of homes by an average \$4,000 to \$6,000 per home and potentially stagnate the office building market. The cost-effectiveness test looks at too long of a time period. Building owners do not look to recoup an investment in 30 years, but rather 10 to 15 years.

(Other) Section 11 through 15 relating to natural gas need a few changes to make it workable. Section 17 needs clarification regarding the reporting provisions. An amendment to reenact a previous business and occupation (B&O) tax exemption would ensure that funds retained and used by utilities for energy conservation expenses are not subject to B&O taxes. These funds can be used by the utility for low-income ratepayer assistance and weatherization programs.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill invests heavily in energy efficiency, which is our cheapest and best resource. The largest fiscal impact is the creation of a performance standard for large existing commercial buildings. This standard is innovative in creative policymaking to help renew our existing commercial buildings. Too often a building is built, people walk away, and new technologies emerge. While we incorporate changes into building codes, it is more difficult and capital intensive to bring existing buildings up to date and reduce their energy use. If climate goals are to be met, it is critical to reduce the energy use of the state's large buildings through performance standards, near-term incentives, technical assistance, and alternative compliance pathways for those struggling to meet that standard. The incentives are directed at buildings needing the largest capital improvements and that money can leverage significant private capital, stretching those dollars further and creating jobs up and down the skills ladder throughout the state.

(Opposed) None.

(Other) The adoption and development of new technologies to create innovative designs for people to work and live in makes sense. It is good for the environment and saves money. However, there are concerns about the cost to building owners represented by the policies in this bill. The development of these regulations involved a robust stakeholder process and a positive dialogue on ways to better define a cost-effective investment.

The 4.2 million metric tons of greenhouse gas reduction contemplated in the building energy efficiency also includes carbon reductions for other policies, and buildings do not represent the entire 4.2 metric tons. As these policies develop, it is important to develop a more

specific greenhouse gas reduction goal for this specific policy to better understand the cost impacts of the proposal. Whatever that number is, it will be borne by a relatively small universe of about 7,000 buildings.

Persons Testifying (Environment & Energy): (In support) Representative Doglio, prime sponsor; Chris Davis, Office of the Governor; Amy Wheelless, Northwest Energy Coalition; Kirsten Smith, American Institute of Architects; Kerry Meade, Northwest Energy Efficiency Council; Bruce Bassett, City of Mercer Island; Nancy Tosta, City of Burien; Matt Larson, City of Snoqualmie; Megan Smith, King County; Greg Rock, Carbon Washington; David Perk, 350 Seattle; Leah Missik, Climate Solutions; Rebecca Ponzio, Washington Environmental Council and Washington Conservation Voters; Stephanie Celt, BlueGreen Alliance; Dave Warren, Klickitat County Public Utility District; John Leigh, Virginia Mason Medical Center; Chris Van Daalen, Northwest EcoBuilding Guild; Poppy Storm, 2050 Institute; and Nathaniel Jones, City of Olympia.

(Opposed) Van Collins, American Council of Engineering Companies of Washington; Charlie Brown, Cascade Natural Gas; and Bill Stauffacher, Building Industry Association of Washington.

(Other) Dan Kirschner, Northwest Gas Association; Laura Wilkeson and Brandon Housekeeper, Puget Sound Energy; Nina Kapoor, Coalition for Renewable Natural Gas; John Rothlin, Avista; Greg Hanon, NAIOP Research Foundation; Jerry VanderWood, Associated General Contractors; and Carl Schroeder, Association of Washington Cities.

Persons Testifying (Finance): (In support) Representative Doglio, prime sponsor; Trent House, Providence Health and Services; Chris Davis, Climate and Energy Affairs; Dave Warren, Klickitat Public Utility District; Kerry Meade, Northwest Energy Efficiency Council; Giovanna Orecchio, Service Employees International Union Local 6; Amy Wheelless, Northwest Energy Coalition; Matthew Hepner, International Brotherhood of Electrical Workers; and Laura Wilkeson, Puget Sound Energy.

(Opposed) Jan Himebaugh, Building Industry Association of Washington.

(Other) Greg Hanon, National Association for Industrial and Office Parks; Dan Kirschner, Northwest Gas Association; John Rothlin, Avista; Charlie Brown, Cascade Natural Gas and Northwest Natural; and Bill Clarke, Washington Public Utilities District Association.

Persons Testifying (Appropriations): (In support) Amy Wheelless, Northwest Energy Coalition.

(Other) Greg Hanon, NAIOP.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Finance): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.