

# SENATE BILL REPORT

## SB 5722

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As of February 4, 2022

**Title:** An act relating to reducing greenhouse gas emissions in buildings.

**Brief Description:** Reducing greenhouse gas emissions in buildings.

**Sponsors:** Senators Nguyen, Lias, Lovelett, Nobles, Pedersen, Saldaña and Stanford; by request of Office of the Governor.

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 1/13/22, 2/02/22 [DPS-WM, DNP].

**Ways & Means:** 2/04/22.

**Brief Summary of First Substitute Bill**

- Requires the Department of Commerce (Commerce) to adopt state energy management and benchmarking requirements for buildings between 20,000 and 50,000 square feet and to multifamily residential buildings larger than 50,000 square feet (tier 2) by December 1, 2023.
- Requires Commerce to evaluate benchmarking data to determine energy use and greenhouse gas emissions averages by building type by July 1, 2029.
- Requires Commerce to adopt rules for performance standards for tier 2 buildings by December 31, 2030.
- Extends the early adopter incentive program to tier 2 buildings.

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**SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY**

**Majority Report:** That Substitute Senate Bill No. 5722 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Liias, Lovick, Nguyen, Stanford and Wellman.

**Minority Report:** Do not pass.

Signed by Senators Fortunato and Sheldon.

**Staff:** Ashley Trunnell (786-7278)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Michael Bezanson (786-7449)

**Background:** Department of Commerce. The Department of Commerce (Commerce) is the state agency responsible for implementing, administering, and monitoring the state's energy use and supply. Commerce develops and implements a strategic plan for enhancing energy efficiency in and reducing greenhouse gas (GHG) emissions from homes, buildings, districts, and neighborhoods.

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. The Council reviews, updates, and adopts model state building codes every three years. The Council must adopt 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.

State Energy Performance Standard. The Legislature enacted the Clean Buildings Act in 2019, which required Commerce to establish by rule state energy performance standards (Standard) for covered commercial buildings. Covered commercial buildings include those where the sum of nonresidential, hotel, motel, and dormitory floor areas exceeds 50,000 gross square feet, excluding the parking garage area.

The Standard seeks to maximize reductions in GHG emissions from the building sector. The Standard includes 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.

Commerce 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. Commerce may by rule, adjust the maximum penalty rates for inflation.

Early Adopter Incentive Program. The Standard includes an early adopter incentive program for covered building owners who comply with the Standard before the required date. Covered building owners can receive a base incentive payment of \$0.85 per gross square foot of floor area, excluding parking, unconditioned, or semiconditioned spaces. Commerce may not approve incentive payments that exceed a total of \$75,000,000.

**Summary of Bill (First Substitute):** Energy Management and Benchmarking Requirements. By December 1, 2023, Commerce must adopt state energy management and benchmarking requirements to include tier 2 covered buildings. Adopted requirements must be consistent with the Standard for covered commercial buildings. A small business economic impact statement must be included as part of the rule making process. Commerce must provide a support program to building owners including certain elements such as outreach and informational materials. Commerce is also authorized to establish a tiered incentive program to supplement the cost to the building owner or tenant to implement the requirements. Multifamily building owners willing to commit to antidisplacement provisions may receive enhanced incentive payments.

Commerce must notify tier 2 building owners with the requirements by July 1, 2025. Tier 2 covered building owners must submit reports with their compliance plans to Commerce by July 1, 2027. Every five years thereafter, tier 2 covered building owners must submit a report to Commerce detailing their compliance with the requirements adopted by Commerce. Reports must include energy management plans, operations and maintenance plans, and energy use analysis.

By July 1, 2029, Commerce must evaluate benchmarking data to determine energy use and greenhouse-gas emissions averages by building type. Commerce must submit a report to the Legislature and the Governor by October 1, 2029, outlining recommendations for cost-effective building performance standards for tier 2 covered buildings, the estimated costs for building owners to implement the Standards, and anticipated implementation challenges.

Penalties. Commerce is authorized to impose a maximum administrative penalty of \$0.30 per square foot of floor area if tier 2 building owners fail to submit documentation demonstrating their compliance with the requirements adopted by the department. Commerce must include exemptions for financial hardship and an appeals process for administrative determinations, including penalties.

Funds collected from the collection of penalties must be deposited into the low-income weatherization and structural rehabilitation assistance account. Expenditures made with

these funds must be reinvested into the state energy performance standard program to support compliance with the Standard.

Energy Performance Standards. Commerce must adopt rules to include tier 2 covered buildings in the Standard by December 31, 2030. Commerce must include a small business economic impact statement as part of the rule making. The rules may not take effect before the conclusion of the 2031 legislative session.

Early Adopter Incentive Program. Tier 2 eligible building owners must be included in the early adopter incentive program. Tier 2 eligible building owners may receive a base incentive payment of \$0.30 per gross square foot of floor area, excluding parking, unconditioned, or semiconditioned spaces.

Definitions. Tier 1 covered buildings include buildings where the sum of nonresidential, hotel, motel, and dormitory floor areas exceeds 50,000 gross square feet, excluding the parking garage area.

Tier 2 covered buildings include multifamily residential, nonresidential, hotel, motel, and dormitory floor areas that are greater than 20,000 square feet and less than 50,000 square feet, excluding the parking garage area. Tier 2 covered buildings also include multifamily buildings where the floor areas are equal to or greater than 50,000 square feet.

**EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):**

Removes the definition of greenhouse gas adjusted energy use intensity.

Requires Commerce to include a small business impact statement as part of rule making when adopting the state energy management and benchmarking requirement for tier 2 covered buildings. Commerce must also include exemptions for financial hardship and an appeals process for administrative determinations, including penalties imposed, in establishing the state energy management and benchmarking requirements for tier 2 covered buildings.

Revises the incentive assistance funds program to authorize Commerce to follow a tiered incentive structure for upgrading multifamily buildings. Removes the requirement preventing the raising of tenants' rent for buildings receiving incentive assistance funds and related administrative penalties and provides an enhanced incentive payment to multifamily building owners willing to commit to antidisplacement provisions.

Requires Commerce to extend the state energy standard early adoption incentive program to tier 2 covered buildings. Allows tier 2 eligible building owners that demonstrate compliance with the benchmarking, energy management, and operations and maintenance planning requirements to receive a base incentive payment of \$0.30 per gross square floor

of floor area, excluding parking, unconditioned, or semiconditioned space. Specifies Commerce may not issue a certification for a tier 2 incentive application if it is likely to result in the total incentive payments exceeding \$150,000,000.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill (Environment, Energy & Technology):** *The committee recommended a different version of the bill than what was heard.* PRO: Washington State will not be able meet the statutory requirements to reduce GHG emissions without this bill. Requiring the implementation of the expanded building performance standards at the state level will reduce the burden on local governments to dedicate limited resources to enact similar policies. The customer support and technical assistance provided to building owners and managers will reduce implementation challenges. Renter protections will ensure tenants are not displaced in the transition to cleaner buildings. Enacting these standards will improve indoor air quality and protect human health.

CON: Rent control measures in combination with mandatory compliance requirements will hurt building owners' ability to stay in business. More incentive funding should be included to help building owners comply with the standards. The expansion of the building performance standards under this bill should be revised to be consistent with the existing standards for current covered commercial buildings. Washington State's electric grid may experience reduced reliability due to the increased reliance on electricity.

OTHER: Commercial and multifamily buildings need to reduce GHG emissions, but rent control measures should not be included in this bill.

**Persons Testifying (Environment, Energy & Technology):** PRO: Senator Joe Nguyen, Prime Sponsor; Anna Lising, Governor's Office; Lisa Parshley, Olympia City Council; Chris Roberts, Shoreline City Council; Emily Salzberg, Department of Commerce; Martin Gibbins, League of Women Voters of Washington; Israel Lopez, Washington Legislative Youth Advisory Council; Christopher Patano, EHDD/American Institute of Architects; Rebecca Price, U.S. Green Building Council; Kerry Meade, Northwest Energy Efficiency Council; Alejandra Mejia Cunningham, Natural Resources Defense Council; Geoff Glass, Providence; Jon Grant, Low Income Housing Institute; Amy Wheelless, NW Energy Coalition; Holly Townes.

CON: Jeff Pack, Me; John Rothlin, Avista; Peter Godlewski, AWB; Brandon Houskeeper,

Alliance of Western Energy Consumers; Charlie Brown, Cascade Natural Gas/Northwest Natural; Greg Hanon, NAIOP; Grant Nelson, WA PUD Assoc & WA Rural Electric Cooperative Assoc; William Shadbolt, WA Business Properties Assn; Mary Hull-Drury, Washington Realtors & WA Association of Commercial Realtors; Jan Himebaugh, Building Industry Association of Washington.

OTHER: Rod Kauffman, Building Owners and Managers Association.

**Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology):** PRO: Anna Lising, Governor's Office.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** OTHER: We are appreciative of the changes in the bill and the amount of collaboration that went into it. This is a much better proposal. However, we still have concerns. When the original program started this fall there were errors in notifications and misunderstandings. This bill covers many more buildings and the roll out will be much more complicated given its size.

The Legislature should take an active role in this legislation over the coming years. This bill impacts small and mid-size businesses who have been hit hard by COVID. This is another new requirement for them. Please consider the burdens that have been placed on them.

**Persons Testifying (Ways & Means):** OTHER: Greg Hanon, NAIOP; Peter Godlewski, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.