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**SUBSTITUTE HOUSE BILL 1390**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Ramel, Berry, Duerr, Doglio, Pollet, and Reed)

READ FIRST TIME 02/13/23.

1 AN ACT Relating to district energy systems; amending RCW  
2 19.27A.210; adding a new section to chapter 19.27A RCW; and creating  
3 a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that building  
6 decarbonization is necessary to achieve the state's climate goals.  
7 Washington is a member of the national building performance standards  
8 coalition and is leading the nation with existing building  
9 performance standards. District energy policy could be used in  
10 coordination with any future statewide building performance standards  
11 policies to reduce commercial and large state-owned building  
12 emissions.

13 Due to the increased prevalence of extreme summer heat events,  
14 the ability to cool space at our state-run campus facilities,  
15 including correctional facilities, is an essential function of  
16 maintaining humane living, working, and learning conditions.

17 Upgrading existing district energy systems has great potential to  
18 increase efficiency, oftentimes more so than a building-by-building  
19 approach.

20 Upgrading and constructing district energy systems will employ  
21 skilled labor, including trades that have historically performed work

1 on fossil fuel energy sources. This work will be an important part of  
2 a just transition to a clean energy economy.

3 For state-owned facilities connected to district energy systems,  
4 the legislature recognizes that it may take years, multiple budget  
5 cycles, and commitments as anchor customers to develop and upgrade  
6 campus district energy systems, but remains committed to steadily  
7 investing in plans developed by these agencies and their selected  
8 providers. Having plans for multiyear customer commitments or  
9 spending programs will set the state and private sector up well for  
10 applying for federal grants and resources and to appropriately plan  
11 capital, operating, and climate commitment act funding for these  
12 investments over time.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.27A  
14 RCW to read as follows:

15 (1) The definitions in this subsection apply throughout this  
16 section unless the context clearly requires otherwise.

17 (a) "Campus" means a collection of buildings served by a district  
18 heating, cooling, water reuse, or power system.

19 (b) "Campus district energy system" means a district energy  
20 system that provides heating, cooling, or heating and cooling to a  
21 campus through a distributed system providing steam, hot water, or  
22 cool water to five or more buildings with more than 100,000 square  
23 feet of combined conditioned space, where the system and all  
24 connected buildings are owned by a single entity, or a public-private  
25 partnership in which a private entity owns the systems providing  
26 heating, cooling, or heating and cooling to buildings owned by one  
27 public entity.

28 (c) "State campus district energy system" means a campus district  
29 energy system owned by the state of Washington or by a public-private  
30 partnership including one public buildings owner and one private  
31 entity.

32 (2)(a) The owner of a state campus district energy system must  
33 develop a decarbonization plan that provides a strategy for up to 15  
34 years for the state campus district energy system. The department of  
35 commerce may approve a decarbonization plan that is based on a  
36 planning time frame longer than 15 years. The decarbonization plan  
37 must include:

38 (i) Mechanisms to replace fossil fuels in the heating plants,  
39 including a schedule for replacement;

1 (ii) An evaluation of possible options to partner with nearby  
2 sources and uses of waste heat and cooling;

3 (iii) An examination of opportunities to add buildings or other  
4 facilities to the system once it is decarbonized, a strategy to  
5 incentivize growth of a decarbonized system, and requirements for  
6 facilities joining the system; and

7 (iv) An evaluation, prioritization, and scheduled plan of  
8 reducing energy use through conservation efforts both at the central  
9 plant and in the buildings connected to district energy systems that  
10 results in meeting the campus energy use intensity target.

11 (b) The owner of a state campus district energy system is  
12 encouraged to include the following considerations in a  
13 decarbonization plan:

14 (i) Distribution network upgrades;

15 (ii) On-site energy storage facilities;

16 (iii) Space cooling for residential facilities;

17 (iv) Labor and workforce, including state registered  
18 apprenticeship utilization;

19 (v) Options for public-private partnerships;

20 (vi) Incorporation of industrial symbiosis projects or networks  
21 as described in chapter 308, Laws of 2021.

22 (c) The owner of a state campus district energy system must  
23 consult with the electric utility serving the site of the system  
24 during decarbonization plan development.

25 (3)(a) The owner of a state campus district energy system must  
26 begin developing a decarbonization plan by June 30, 2024, and must  
27 submit a final decarbonization plan to the department of commerce by  
28 June 30, 2025.

29 (b) Upon submittal to the department of commerce, decarbonization  
30 plans must be reviewed and approved by the department of commerce.  
31 The department of commerce may ask for a decarbonization plan to be  
32 revised and resubmitted if it does not meet standards as determined  
33 by the department of commerce.

34 (c) Every five years after June 30, 2025, the owner of a state  
35 campus district energy system must resubmit the decarbonization plan,  
36 along with a progress report on the implementation of the  
37 decarbonization plan, to the department of commerce.

38 (4) The department of commerce must provide a summary report on  
39 the decarbonization plans required in subsection (3) of this section

1 to the governor and the appropriate committees of the legislature by  
2 December 1, 2025.

3 (5) The owner of a state campus district energy system is not  
4 required to meet the energy use intensity target in all the connected  
5 buildings that are heated, cooled, or heated and cooled by the  
6 system, or to conduct an investment grade audit, to otherwise comply  
7 with the state energy performance standard requirements in RCW  
8 19.27A.200 through 19.27A.250 if the following conditions for an  
9 alternative compliance pathway are met:

10 (a) The owner of a state campus district energy system is  
11 implementing a department of commerce-approved decarbonization plan  
12 or has fully implemented a department of commerce-approved  
13 decarbonization plan for the state campus district energy system and  
14 all of its connected buildings that, when fully implemented, meets  
15 the energy use intensity target established for the campus at the  
16 time of required measurement and verification. The owner may apply  
17 for phased implementation through conditional compliance in  
18 accordance with requirements of the decarbonization plan;

19 (b) The owner of the state campus district energy system meets  
20 the benchmarking, energy management, and operations and maintenance  
21 planning requirements under RCW 19.27A.200 through 19.27A.250 for the  
22 state campus district energy system and all of its connected  
23 buildings; and

24 (c) The owner of a state campus district energy system submits a  
25 request to the department of commerce once during every five-year  
26 compliance cycle as part of documentation submitted in accordance  
27 with RCW 19.27A.210(7), and the department of commerce approves the  
28 request.

29 (6) The owner of a campus district energy system may submit a  
30 request to the department of commerce to opt-in to the process for  
31 approval of an alternative compliance pathway as outlined in this  
32 section. If approved by the department of commerce, the campus  
33 district energy system must follow all of the requirements outlined  
34 for a state campus district energy system in this section, and the  
35 department of commerce must apply all authorities granted under this  
36 section for state campus district energy systems to such a campus  
37 district energy system.

38 **Sec. 3.** RCW 19.27A.210 and 2021 c 65 s 19 are each amended to  
39 read as follows:

1 (1) (a) By November 1, 2020, the department must establish by rule  
2 a state energy performance standard for covered commercial buildings.

3 (b) In developing energy performance standards, the department  
4 shall seek to maximize reductions of greenhouse gas emissions from  
5 the building sector. The standard must include energy use intensity  
6 targets by building type and methods of conditional compliance that  
7 include an energy management plan, operations and maintenance  
8 program, energy efficiency audits, and investment in energy  
9 efficiency measures designed to meet the targets. The department  
10 shall use ANSI/ASHRAE/IES standard 100-2018 as an initial model for  
11 standard development. The department must update the standard by July  
12 1, 2029, and every five years thereafter. Prior to the adoption or  
13 update of the standard, the department must identify the sources of  
14 information it relied upon, including peer-reviewed science.

15 (2) In establishing the standard under subsection (1) of this  
16 section, the department:

17 (a) Must develop energy use intensity targets that are no greater  
18 than the average energy use intensity for the covered commercial  
19 building occupancy type with adjustments for unique energy using  
20 features. The department must also develop energy use intensity  
21 targets for additional property types eligible for incentives in RCW  
22 19.27A.220. The department must consider regional and local building  
23 energy utilization data, such as existing energy star benchmarking  
24 data, in establishing targets for the standard. Energy use intensity  
25 targets must be developed for two or more climate zones and be  
26 representative of energy use in a normal weather year;

27 (b) May consider building occupancy classifications from ANSI/  
28 ASHRAE/IES standard 100-2018 and the United States environmental  
29 protection agency's energy star portfolio manager when developing  
30 energy use intensity targets;

31 (c) May implement lower energy use intensity targets for more  
32 recently built covered commercial buildings based on the state energy  
33 code in place when the buildings were constructed;

34 (d) (i) Must adopt a conditional compliance method that ensures  
35 that covered commercial buildings that do not meet the specified  
36 energy use intensity targets are taking action to achieve reduction  
37 in energy use, including investment criteria for conditional  
38 compliance that ensure that energy efficiency measures identified by  
39 energy audits are implemented to achieve a covered commercial  
40 building's energy use intensity target. The investment criteria must

1 require that a building owner adopt an implementation plan to meet  
2 the energy intensity target or implement an optimized bundle of  
3 energy efficiency measures that provides maximum energy savings  
4 without resulting in a savings-to-investment ratio of less than 1.0,  
5 except as exempted in (d) (ii) of this subsection. The implementation  
6 plan must be based on an investment grade energy audit and a life-  
7 cycle cost analysis that accounts for the period during which a  
8 bundle of measures will provide savings. The building owner's cost  
9 for implementing energy efficiency measures must reflect net cost,  
10 excluding any costs covered by utility or government grants. The  
11 implementation plan may exclude measures that do not pay for  
12 themselves over the useful life of the measure and measures excluded  
13 under (d) (ii) of this subsection. The implementation plan may include  
14 phased implementation such that the building owner is not required to  
15 replace a system or equipment before the end of the system or  
16 equipment's useful life;

17 (ii) For those buildings or structures that are listed in the  
18 state or national register of historic places; designated as a  
19 historic property under local or state designation law or survey;  
20 certified as a contributing resource with a national register listed  
21 or locally designated historic district; or with an opinion or  
22 certification that the property is eligible to be listed on the  
23 national or state registers of historic places either individually or  
24 as a contributing building to a historic district by the state  
25 historic preservation officer or the keeper of the national register  
26 of historic places, no individual energy efficiency requirement need  
27 be met that would compromise the historical integrity of a building  
28 or part of a building;

29 (e) Must provide an alternative compliance pathway for an owner  
30 of a state campus district energy system, in accordance with section  
31 2 of this act, and more broadly for the owner of any campus district  
32 energy system that is approved by the department to opt-in in  
33 accordance with section 2(6) of this act;

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

38 (g) Must guarantee that a state campus district energy system, as  
39 defined in section 2 of this act, and all buildings connected to a  
40 state campus district energy system, are in compliance with any

1 requirements for campus buildings to implement energy efficiency  
2 measures identified by an energy audit if:

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

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

9 (3) Based on records obtained from each county assessor and other  
10 available information sources, the department must create a database  
11 of covered commercial buildings and building owners required to  
12 comply with the standard established in accordance with this section.

13 (4) By July 1, 2021, the department must provide the owners of  
14 covered buildings with notification of compliance requirements.

15 (5) The department must develop a method for administering  
16 compliance reports from building owners.

17 (6) The department must provide a customer support program to  
18 building owners including, but not limited to, outreach and  
19 informational material, periodic training, phone and email support,  
20 and other technical assistance.

21 (7) The building owner of a covered commercial building must  
22 report the building owner's compliance with the standard to the  
23 department in accordance with the schedule established under  
24 subsection (8) of this section and every five years thereafter. For  
25 each reporting date, the building owner must submit documentation to  
26 demonstrate that:

27 (a) The weather normalized energy use intensity of the covered  
28 commercial building measured in the previous calendar year is less  
29 than or equal to the energy use intensity target; or

30 (b) The covered commercial building has received conditional  
31 compliance from the department based on energy efficiency actions  
32 prescribed by the standard; or

33 (c) The covered commercial building is exempt from the standard  
34 by demonstrating that the building meets one of the following  
35 criteria:

36 (i) The building did not have a certificate of occupancy or  
37 temporary certificate of occupancy for all (~~twelve~~) 12 months of  
38 the calendar year prior to the building owner compliance schedule  
39 established under subsection (8) of this section;

1 (ii) The building did not have an average physical occupancy of  
2 at least (~~(fifty)~~) 50 percent throughout the calendar year prior to  
3 the building owner compliance schedule established under subsection  
4 (8) of this section;

5 (iii) The sum of the building's gross floor area minus  
6 unconditioned and semiconditioned spaces, as defined in the  
7 Washington state energy code, is less than (~~(fifty-thousand)~~) 50,000  
8 square feet;

9 (iv) The primary use of the building is manufacturing or other  
10 industrial purposes, as defined under the following use designations  
11 of the international building code: (A) Factory group F; or (B) high  
12 hazard group H;

13 (v) The building is an agricultural structure; or

14 (vi) The building meets at least one of the following conditions  
15 of financial hardship: (A) The building had arrears of property taxes  
16 or water or wastewater charges that resulted in the building's  
17 inclusion, within the prior two years, on a city's or county's annual  
18 tax lien sale list; (B) the building has a court appointed receiver  
19 in control of the asset due to financial distress; (C) the building  
20 is owned by a financial institution through default by a borrower;  
21 (D) the building has been acquired by a deed in lieu of foreclosure  
22 within the previous (~~(twenty-four)~~) 24 months; (E) the building has a  
23 senior mortgage subject to a notice of default; or (F) other  
24 conditions of financial hardship identified by the department by  
25 rule.

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

29 (a) For a building with more than (~~(two-hundred-twenty-thousand)~~)  
30 220,000 gross square feet, June 1, 2026;

31 (b) For a building with more than (~~(ninety-thousand)~~) 90,000  
32 gross square feet but less than (~~(two-hundred-twenty-thousand-and~~  
33 ~~one)~~) 220,001 gross square feet, June 1, 2027; and

34 (c) For a building with more than (~~(fifty-thousand)~~) 50,000 gross  
35 square feet but less than (~~(ninety-thousand-and-one)~~) 90,001 square  
36 feet, June 1, 2028.

37 (9)(a) The department may issue a notice of violation to a  
38 building owner for noncompliance with the requirements of this  
39 section. A determination of noncompliance may be made for any of the  
40 following reasons:



1 (i) Failure to submit a compliance report in the form and manner  
2 prescribed by the department;

3 (ii) Failure to meet an energy use intensity target or failure to  
4 receive conditional compliance approval;

5 (iii) Failure to provide accurate reporting consistent with the  
6 requirements of the standard established under this section; and

7 (iv) Failure to provide a valid exemption certificate.

8 (b) In order to create consistency with the implementation of the  
9 standard and rules adopted under this section, the department must  
10 reply and cite the section of law, code, or standard in a notice of  
11 violation for noncompliance with the requirements of this section  
12 when requested to do so by the building owner or the building owner's  
13 agent.

14 (10) The department is authorized to impose an administrative  
15 penalty upon a building owner for failing to submit documentation  
16 demonstrating compliance with the requirements of this section. The  
17 penalty may not exceed an amount equal to (~~five thousand dollars~~)  
18 \$5,000 plus an amount based on the duration of any continuing  
19 violation. The additional amount for a continuing violation may not  
20 exceed a daily amount equal to (~~one dollar~~) \$1 per year per gross  
21 square foot of floor area. The department may by rule increase the  
22 maximum penalty rates to adjust for the effects of inflation.

23 (11) Administrative penalties collected under this section must  
24 be deposited into the low-income weatherization and structural  
25 rehabilitation assistance account created in RCW 70A.35.030.

26 (12) The department must adopt rules as necessary to implement  
27 this section, including but not limited to:

28 (a) Rules necessary to ensure timely, accurate, and complete  
29 reporting of building energy performance for all covered commercial  
30 buildings;

31 (b) Rules necessary to enforce the standard established under  
32 this section; and

33 (c) Rules that provide a mechanism for appeal of any  
34 administrative penalty imposed by the department under this section.

35 (13) Upon request by the department, each county assessor must  
36 provide property data from existing records to the department as  
37 necessary to implement this section.

38 (14) By January 15, 2022, and each year thereafter through 2029,  
39 the department must submit a report to the governor and the  
40 appropriate committees of the legislature on the implementation of

1 the state energy performance standard established under this section.  
2 The report must include information regarding the adoption of the  
3 ANSI/ASHRAE/IES standard 100-2018 as an initial model, the financial  
4 impact to building owners required to comply with the standard, the  
5 amount of incentives provided under RCW 19.27A.220 and 19.27A.230,  
6 and any other significant information associated with the  
7 implementation of this section.

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