

HOUSE BILL REPORT

ESSB 5509

As Passed House:
March 30, 2005

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

Brief Description: Concerning high-performance building standards.

Sponsors: By Senate Committee on Water, Energy & Environment (originally sponsored by Senators Poulsen, Esser, Fraser, Schmidt, Pridemore, Fairley, Berkey, Kohl-Welles, Kline, Regala, Rockefeller, Weinstein, Brown, Keiser and McAuliffe).

Brief History:

Committee Activity:

Capital Budget: 3/17/05 [DP].

Floor Activity:

Passed House: 3/30/05, 78-19.

Brief Summary of Engrossed Substitute Bill

- Requires major facility projects of public agencies, public school districts, and other entities who receive funding in the Capital Budget, or projects financed through alternative financing contracts as established in law, to be designed, constructed, and certified to a specified performance standard (LEED silver standard or the Washington sustainable school design protocol).
- Directs the development of program guidelines, development of an ongoing evaluation process, creation of advisory committees, and the adoption of rules to implement the program.
- Directs the Joint Legislative Audit and Review Committee to conduct a performance audit of the high-performance buildings program and submit a preliminary report to the Legislature by December 1, 2010, and a final report by July 1, 2011.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass. Signed by 20 members: Representatives Dunshee, Chair; Jarrett, Ranking Minority Member; Hankins, Assistant Ranking Minority Member; Blake, Chase, Cox, Eickmeyer, Ericks, Ericksen, Flannigan, Green, Hasegawa, Lantz, Moeller, Morrell, O'Brien, Schual-Berke, Springer, Strow and Upthegrove.

Minority Report: Do not pass. Signed by 3 members: Representatives Holmquist, Kretz and McCune.

Staff: Susan Howson (786-7142).

Background:

"Green building" or sustainable building practices are measures of energy efficiency, water conservation, waste minimization, pollution prevention, indoor environmental quality, and resource-efficient materials during the lifetime of a building. These practices occur during design, construction, and operation of a building and its landscaping. Two systems exist to evaluate the degree of sustainability of a building project: Built Green®; and Leadership in Energy and Environmental Design (LEED)®. Built Green is used primarily for residential construction and remodeling; LEED is used for commercial projects and housing over four stories. The LEED was established by the U.S. Green Building Council (USGBC).

The LEED Certification distinguishes building projects that have demonstrated a commitment to sustainability by meeting a high level of performance standards. The certification is a for fee process using a prerequisite and point system to rate a building's energy efficiency. The LEED rated buildings are registered with USGBC during the design process, and become fully certified upon completion of construction. The LEED focuses on five major areas of environmental sustainability:

- sustainable sites;
- energy and atmosphere;
- water efficiency;
- green building materials; and
- indoor air quality.

Prerequisites are specified in each of the above categories, and points must be earned in each category for a building to become certified. The LEED also allows for innovation points to encourage processes and technologies that are not yet mainstream, but show innovation and creativity in building design. Buildings are rated on a four-step scale from lowest to highest: LEED Certified, LEED Silver, LEED Gold, and LEED Platinum.

Since 2002, the Governor has issued three Executive Orders relating to sustainable practices by state agencies, including building construction. The latest, Executive Order 05-01 issued on January 5, 2005, establishes further sustainability and efficiency goals for state operations. It contains additional direction relating to the use of forest products in all building construction projects and major remodels over 25,000 gross square feet.

Executive Order 05-01 directs state agencies to incorporate green building practices in all new construction projects and major remodels over 25,000 gross square feet entering pre-design in the 2005-07 biennium and thereafter. The LEED Silver standard certification is required or an alternative equivalent certification as determined by the Department of General Administration (GA).

The GA is directed to develop and implement a review to ensure that sustainable building practices are consistent with LEED Silver standard. Building projects between 5,000 and 25,000 gross square feet and entering predesign or design in the 2005-07 biennium, are subject to this review. The GA is authorized to collect a fee for review, training, and support to other agencies, and develop processes and procedures to ensure that sustainable building practices are incorporated into design and construction processes. The Executive Order requires other targets and reductions to achieve gains in energy efficiency which are not related to facilities.

Summary of Bill:

Definitions:

"Institutions of higher education" is defined as the state's public four-year baccalaureate institutions, and the community and technical colleges.

"LEED Silver Standard" is defined as the U.S. Green Building Council Leadership in Energy and Environmental Design green building rating standard, also referred to as silver standard.

"Major facility project" is defined as: (a) a construction project larger than 5,000 gross square feet of occupied space; and (b) 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 space.

"Major facility project" does not include: (i) projects for which the GA, public school district, or other applicable agency and the design team determine the LEED Silver standard or the Washington sustainable school design protocol not to be practicable; or (ii) transmitter buildings, pumping stations, hospitals, specified research facilities, or other similar building types as determined by the GA. When the LEED Silver standard is not practicable for a project, then it must be determined if any LEED Standard is practicable for the project. If LEED standards or the Washington sustainable school design protocol are not followed for the project, the public school district or public agency shall report these reasons to the GA.

"Public agency" is defined as every state office, officer, board, commission, committee, bureau, department, and public higher education institution.

"Public school district" is defined as a school district eligible to receive basic education moneys pursuant to RCW 28A.150.250 and RCW 28A.150.260.

"Washington sustainable school design protocol" is defined as the school design protocol and related information developed by the State Board of Education (SBE) and the Office of the Superintendent of Public Instruction (OSPI), in conjunction with school districts and the School Facilities Advisory Board.

Certification and Reporting Requirements

The LEED Silver certification is required for all major facility projects of public agencies and any other entity receiving any funding in the Capital Budget, including projects financed through financing contracts, to the extent appropriate LEED Silver Standards exist for the building type. The LEED Silver certification or the Washington sustainable school design protocol is required for all public school districts receiving any funding in the Capital Budget, to the extent these standards exist for the building type. These requirements apply to public agency projects that have not entered into the design phase prior to the effective date of the bill. For other entities, these requirements apply to projects that have not entered the grant application phase prior to the bill's effective date. Public school districts are subject to the following dates:

- July 1, 2006, for volunteering school districts;
- July 1, 2007, for Class I school districts; and
- July 1, 2008, for Class II school districts.

Affordable housing projects receiving funding in the Capital Budget are exempt from the certification requirements outlined in the bill. By July 1, 2008, the Department of Community, Trade and Economic Development (DCTED) must identify, implement, and apply a sustainable building program for Housing Trust Fund projects. From 2009 to 2016, the DCTED must report major facility projects and operating savings to the GA.

Public agencies and public school districts must monitor and document ongoing operating savings resulting from majority facility projects designed, constructed, and certified using such standards. They must also report reasons why the LEED Standard was not used. The results must be reported annually by public agencies to the GA and by public school districts to the OSPI. The GA and the OSPI are directed to consolidate the individual reports into a single biennial report due to the Governor and the Legislature on September 1 from 2006 to 2016.

By January 1, 2009, the GA and the OSPI must summarize the reports submitted to the Governor and the Legislature and submit reports to the House Capital Budget Committee and Senate Ways and Means Committee for review of the program's performance and consideration of any changes that may be needed to adapt the program to any new or modified standards for high-performance buildings.

Guidelines and Administration

The GA and the SBE are directed to develop and issue guidelines for agencies and public school districts, including a procedure and method for verifying activities necessary for at least LEED Silver certification or the Washington sustainable school design protocol. The GA and the OSPI must amend their architectural and engineering fee schedules to accommodate design requirements of major facility projects.

The GA and the SBE must create advisory committees to provide advice on implementing the provisions of the bill, provide recommendations on an education process and an ongoing evaluation or feedback process to help the GA and the SBE in their tasks.

In adopting implementation rules, the SBE must review and modify the current requirement for an energy conservation report review by the GA. In addition, the SBE must: (a) review

and modify the current requirements for value engineering, constructability review, and building commissioning; and (b) review private and public utility providers' capacity and financial/technical assistance programs for affected public school districts to monitor and report utility consumption for purposes of reporting to the OSPI.

Additional Provisions

Building commissioning and preproposal conferences are required for major facility projects.

Design or construction teams may not be held liable for failure to achieve the LEED standard, if a good faith effort was made.

In determining compliance with this bill, the GA must credit a project for using wood products with a credible third party sustainable forest certification or from forests regulated under the Washington Forest Practices Act.

It is the intent of the Legislature to emphasize and establish a priority to use Washington based resources, building materials, products, industries, manufacturers, and other business to provide economic development to the state and to meet the objectives of the bill.

The Joint Legislative Audit and Review Committee is directed to conduct a performance audit of the high-performance buildings program and submit a preliminary report to the Legislature by December 1, 2010, and a final report by July 1, 2011.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (In support) Bill sponsors worked very hard to resolve the specific concerns raised by the timber and natural resource industries, local school districts, public housing advocates, and our state's higher education institutions. The bill includes provisions that address their concerns by giving agencies more flexibility to implement the standards, without undermining the overall goals of the legislation. The bill sets improved building performance goals in a manner that is reasonable and fiscally prudent. High performance buildings improve working conditions for employees and students, improve the life-cycle performance of state funded buildings and are good for public health. Environmentally, benefits include: increased reuse of building materials, increased use of recycled materials and products in the construction of high performance buildings which stimulates an increased market for recycled products, and recycling areas are built into the design of "green" buildings.

(In support with concerns) The K-12 system is greatly affected by this legislation. Schools need to be able to choose the approach to sustainability that best meets their needs. Increased education is needed when changes are implemented that effect how schools operate.

Incentives need to be included to help schools implement sustainable projects correctly. The

OSPI recommends incentives and a phase development and deployment process for sustainable practices to help schools implement sustainable projects correctly.

Testimony Against: Many hidden costs exist with construction of high performance buildings. In the case of Thompson Elementary School in the Bethel School district, which followed the protocol proposed in this legislation, sustainable items alone increased construction costs 4.29 percent. Creating a High Performance Schools' fund that is separate from the state match process for school construction and funded at 4 percent would help cover additional costs for school districts.

Persons Testifying: (In support) Stan Bowman, American Institute of Architects Washington Council; Clifford Traisman, Washington Environmental Council and Washington Conservation Voters; Mitch Denning, Alliance of Educational Associations; and Angela Rae, Washington State Recycling Association.

(In support with concerns) Bill Panos, State Board of Education and the Office of the Superintendent of Public Instruction.

(Neutral) Todd Meyers, Washington Policy Center.

(Opposed) Grace Yuan, Preston, Gates and Ellis; and Nancy Josephson, Northshore School District.

Persons Signed In To Testify But Not Testifying: None.