

Chapter 39.35D RCW
HIGH-PERFORMANCE PUBLIC BUILDINGS

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RCW 39.35D.010 Finding—Intent. (1) The legislature finds that public buildings can be built and renovated using high-performance methods that save money, improve school performance, and make workers more productive. High-performance public buildings are proven to increase student test scores, reduce worker absenteeism, and cut energy and utility costs.

(2) It is the intent of the legislature that state-owned buildings and schools be improved by adopting recognized standards for high-performance public buildings, reducing energy consumption, and allowing flexible methods and choices in how to achieve those standards and reductions. The legislature also intends that public agencies and public school districts shall document costs and savings to monitor this program and ensure that economic, community, and environmental goals are achieved each year, and that an independent performance review be conducted to evaluate this program and determine the extent to which the results intended by this chapter are being met.

(3) The legislature further finds that state agency leadership is needed in the development of preparation and adaptation actions for climate change to ensure the economic health, safety, and environmental well-being of the state and its citizens. [2009 c 519 § 8; 2005 c 12 § 1.]

Findings—2009 c 519: See RCW 70A.05.900.

RCW 39.35D.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of enterprise services.

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

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

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

(5) (a) "Major facility project" means: (i) A construction project larger than five thousand gross square feet of occupied or conditioned space as defined in the Washington state energy code; or (ii) a building renovation project when the cost is greater than fifty percent of the assessed value and the project is larger than five thousand gross square feet of occupied or conditioned space as defined in the Washington state energy code.

(b) "Major facility project" does not include: (i) Projects for which the department, public school district, or other applicable agency and the design team determine the LEED silver standard or the Washington sustainable school design protocol to be not practicable; or (ii) transmitter buildings, pumping stations, hospitals, research facilities primarily used for sponsored laboratory experimentation, laboratory research, or laboratory training in research methods, or other similar building types as determined by the department. When the LEED silver standard is determined to be 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 department.

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

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

(8) "Washington sustainable school design protocol" means the school design protocol and related information developed by the office of the superintendent of public instruction, in conjunction with school districts and the school facilities advisory board. [2011 1st sp.s. c 43 § 249; 2006 c 263 § 330; 2005 c 12 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

RCW 39.35D.030 Standards for major facility projects—Annual reports. (1) All major facility projects of public agencies receiving any funding in a state capital budget, or projects financed through a financing contract as defined in RCW 39.94.020, must be designed, constructed, and certified to at least the LEED silver standard. This subsection applies to major facility projects that have not entered

the design phase prior to July 24, 2005, and to the extent appropriate LEED silver standards exist for that type of building or facility.

(2) All major facility projects of any entity other than a public agency or public school district receiving any funding in a state capital budget must be designed, constructed, and certified to at least the LEED silver standard. This subsection applies to major facility projects that have not entered the grant application process prior to July 24, 2005, and to the extent appropriate LEED silver standards exist for that type of building or facility.

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

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

(4) The department shall consolidate the reports required in subsection (3) of this section into one report and report to the governor and legislature by September 1st of each even-numbered year beginning in 2006 and ending in 2016. In its report, the department shall also report on the implementation of this chapter, including reasons why the LEED standard was not used as required by RCW 39.35D.020(5)(b). The department shall make recommendations regarding the ongoing implementation of this chapter, including a discussion of incentives and disincentives related to implementing this chapter.

(5) For the purposes of determining compliance with the requirement for a project to be designed, constructed, and certified to at least the LEED silver standard, the department must credit one additional point for a project that uses wood products with a credible third-party sustainable forest certification or from forests regulated under chapter 76.09 RCW, the Washington forest practices act. For projects that qualify for this additional point, and for which an additional point would have resulted in formal certification under the LEED silver standard, the project must be deemed to meet the standard under this section.

(6) During the 2021-2023 and 2023-2025 fiscal biennia, an alternative high-performance building certification, as determined by the legislature, may be used instead of the LEED silver building design, construction, and certification standard required by this section. [2023 c 474 § 8029; 2021 c 332 § 7049; 2011 c 99 § 1; 2005 c 12 § 3.]

Conflict with federal requirements—Effective date—2023 c 474:

See notes following RCW 28A.320.330.

Effective date—2021 c 332: See note following RCW 43.19.501.

RCW 39.35D.040 Public school district major facility projects—Standards—Annual reports—Advisory committee. (1) All major facility projects of public school districts receiving any funding in a state capital budget must be designed and constructed to at least the LEED silver standard or the Washington sustainable school design protocol. To the extent appropriate LEED silver or Washington sustainable school design protocol standards exist for the type of building or facility, this subsection applies to major facility projects that have not received project approval from the superintendent of public

instruction prior to: (a) July 1, 2006, for volunteering school districts; (b) July 1, 2007, for class one school districts; and (c) July 1, 2008, for class two school districts.

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

(3) The superintendent of public instruction shall consolidate the reports required in subsection (2) of this section into one report and report to the governor and legislature by September 1st of each even-numbered year beginning in 2006 and ending in 2016. In its report, the superintendent of public instruction shall also report on the implementation of this chapter, including reasons why the LEED standard or Washington sustainable school design protocol was not used as required by RCW 39.35D.020(5)(b). The superintendent of public instruction shall make recommendations regarding the ongoing implementation of this chapter, including a discussion of incentives and disincentives related to implementing this chapter.

(4) The superintendent of public instruction shall develop and issue guidelines for administering this chapter for public school districts. The purpose of the guidelines is to define a procedure and method for employing and verifying compliance with the LEED silver standard or the Washington sustainable school design protocol.

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

(6) For projects that comply with this section by meeting the LEED silver standard, the superintendent of public instruction must credit one additional point for a project that uses wood products with a credible third-party sustainable forest certification or from forests regulated under chapter 76.09 RCW, the Washington forest practices act. For projects that qualify for this additional point, and for which an additional point would have resulted in formal certification under the LEED silver standard, the project must be deemed to meet the requirements of subsection (1) of this section. [2011 c 99 § 2; 2006 c 263 § 331; 2005 c 12 § 4.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

RCW 39.35D.050 Annual reports—Submission to legislature. On or before January 1, 2009, the department and the superintendent of public instruction shall summarize the reports submitted under RCW 39.35D.030(4) and 39.35D.040(3) and submit the individual reports to

the legislative committees on capital budget and ways and means 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 that meet the intent of this chapter. [2005 c 12 § 5.]

**RCW 39.35D.060 Guidelines for administration of chapter—
Amendment of fee schedules—Architecture and engineering services—
Building commissioning—Preproposal conferences—Advisory committee.**

(1)(a) The department, in consultation with affected public agencies, shall develop and issue guidelines for administering this chapter for public agencies. The purpose of the guidelines is to define a procedure and method for employing and verifying activities necessary for certification to at least the LEED silver standard for major facility projects.

(b) The department and the office of the superintendent of public instruction shall amend their fee schedules for architectural and engineering services to accommodate the requirements in the design of major facility projects under this chapter.

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

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

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

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

(3) The department and the office of the superintendent of public instruction shall adopt rules to implement this section. [2006 c 263 § 332; 2005 c 12 § 6.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

RCW 39.35D.070 Liability for failure to meet standards. A member of the design or construction teams may not be held liable for the failure of a major facility project to meet the LEED silver standard or other LEED standard established for the project as long as a good faith attempt was made to achieve the LEED standard set for the project. [2005 c 12 § 10.]

RCW 39.35D.080 Affordable housing projects—Exemption. Except as provided in this section, affordable housing projects funded out of the state capital budget are exempt from the provisions of this chapter. On or before July 1, 2008, the department of commerce shall identify, implement, and apply a sustainable building program for affordable housing projects that receive housing trust fund (under chapter 43.185A RCW) funding in a state capital budget. The department of commerce shall not develop its own sustainable building standard, but shall work with stakeholders to adopt an existing sustainable building standard or criteria appropriate for affordable housing. Any application of the program to affordable housing, including any monitoring to track the performance of either sustainable features or energy standards or both, is the responsibility of the department of commerce. Beginning in 2009 and ending in 2016, the department of commerce shall report to the department as required under RCW 39.35D.030(3)(b). [2023 c 275 § 16; 2005 c 12 § 12.]

RCW 39.35D.090 Use of local building materials and products—Intent. It is the intent and an established goal of the LEED program as authored by the United States green building council to increase demand for building materials and products that are extracted and manufactured locally, thereby reducing the environmental impacts and to support the local economy. Therefore, it is the intent of the legislature to emphasize this defined goal and establish a priority to use Washington state based resources, building materials, products, industries, manufacturers, and other businesses to provide economic development to Washington state and to meet the objectives of this chapter. [2005 c 12 § 13.]

RCW 39.35D.100 Water efficient landscaping techniques—Intent—Athletic fields, other project elements—Wildfire ignition resistant landscaping. (1)(a) The legislature intends to encourage the use of landscaping design techniques that meet the highest standards for water efficiency in the design and construction of state-funded buildings. Except as provided in subsection (2) of this section, any public agency, public school district, or other entity undertaking a major facility project subject to the requirements of RCW 39.35D.030 or 39.35D.040 are encouraged to design and construct such projects to receive all practical water efficient landscaping credits available under the United States green building council rating system, international green construction code, other nationally recognized consensus standard, or the Washington sustainable school design protocol, as each standard existed on June 11, 2020. Entities undertaking major facility projects may consider costs and potential benefits when determining the practicality of incorporating water efficient landscaping measures into the design and construction of the projects.

(b) Water efficient landscaping techniques may include:

(i) Reducing or eliminating the use of potable water for irrigation; and

(ii) Configuring irrigation and sprinkler systems to avoid spraying water directly on buildings, sidewalks, or other hardscapes.

(2) This section does not apply to athletic fields or other project elements that are eligible for exclusion from water efficient

landscaping standards under either the United States green building council rating system, international green construction code, other nationally recognized consensus standard, or the Washington sustainable school design protocol, as each standard existed on June 11, 2020.

(3) (a) Nothing in this section may prohibit or restrict the use of wildfire ignition resistant landscaping, including the establishment and maintenance of a fire buffer in the building ignition zone, in the design and construction of major facility projects subject to the requirements of RCW 39.35D.030 or 39.35D.040.

(b) The definitions in this subsection (3) (b) apply throughout this subsection unless the context clearly requires otherwise.

(i) "Building ignition zone" means a building and surrounding area up to two hundred feet from the foundation.

(ii) "Firewise" means the firewise communities program developed by the national fire protection association, which encourages local solutions for wildfire safety by involving homeowners, community leaders, planners, developers, firefighters, and others in the effort to protect people and property from wildfire risks.

(iii) "Wildfire ignition resistant landscaping" includes:

(A) Any landscaping tools or techniques, or noninvasive vegetation, that do not readily ignite from a flame or other ignition source; or

(B) The use of firewise methods to reduce ignition risk in a building ignition zone. [2020 c 9 § 5.]

Findings—Intent—2020 c 9: See note following RCW 64.38.057.

RCW 39.35D.800 Performance review—Report. The joint legislative audit and review committee, or its successor legislative agency, shall conduct a performance review of the high-performance buildings program established under this chapter.

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

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

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

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

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

(2) The committee shall make a preliminary report of its findings and recommendations on or before December 1, 2010, and a final report on or before July 1, 2011. [2005 c 12 § 14.]