Public Review Draft of ASHRAE Standard 100, Normative Annex Z, Additional Administrative Procedure (Part 2)

**Background on Rules Development for HB 1257**

The Department of Commerce is authorized by HB 1257 to develop rules for the adoption of the Washington State Energy Performance Standard for Commercial Buildings. HB 1257 requires Commerce to use ANSI/ASHRAE/IES standard 100-2018, Energy Efficiency in Existing Buildings (standard) as the basis for these rules. Rules will be implemented that adopt the standard by reference, with amendments.

Amendments to the standard will be made to make the standard consistent with the features prescribed in HB 1257. The standard will also be modified to clarify administrative procedures. Additional rules may be required outside of this standard as well.

The following draft rule has been developed by Commerce staff. Then modifications to the various sections of the standard are made to provide consistency between the rule and HB 1257.

Interested parties are encouraged to review standard 100 and modifications made by Commerce staff. Input can be provided on any element that will align the standard with the legislation or existing state laws, clarify application, or improve administrative procedures.

Stakeholders are invited to participate in workshops scheduled to review specific sections of this work. Commerce request that written post workshop comments relating to sections covered at each workshop be received within by the scheduled time period posted on the Commerce Clean Buildings Web site. All comments will be posted on the buildings web site.

Submit comments via email; buildings@commerce.wa.gov.

Review comments and schedules on the Commerce Clean Buildings web site: <http://commerce.wa.gov/buildings>

When editing the standard, please use a standard markup format that includes the following:

* Copy the entire sub-section to be edited
* Underline text to be added
* Use cross out text to indicate deletions
* Provide a reason statement for the change

For any new sections, provide suggested location in the document by referencing the previous section.

**Additional Reference Documents**

ASHRAE Standards.

A free read only copy of ASHRAE Standard 100-2018 [ASHRAE Standard 100-2018](https://www.ashrae.org/technical-resources/standards-and-guidelines/read-only-versions-of-ashrae-standards) (link)

Purchase a copy of the following standards -

* ASHRAE Standard 100-2018 <https://www.techstreet.com/ashrae/searches/27415471>
* ASHRAEStandard211-2018 <https://www.techstreet.com/ashrae/standards/ashrae-211-2018?product_id=2016437>

Previous Review Drafts developed by Commerce for ASHRAE Standard 100

* [Sections one, two, and three](https://www.commerce.wa.gov/wp-content/uploads/2020/05/Discussion-Draft-Sec-1_2_3.docx) (.docx)
* [Section five](https://www.commerce.wa.gov/wp-content/uploads/2020/05/Section-5-discussion-draft.docx) (.docx)
* [Section six](https://www.commerce.wa.gov/wp-content/uploads/2020/05/Section-6-discussion-draft.docx) (.docx)
* [Sections seven, eight, and nine](https://www.commerce.wa.gov/wp-content/uploads/2020/05/Section-789-Comment-Draft-1.docx) (.docx)
* [Normative Annex X](https://www.commerce.wa.gov/wp-content/uploads/2020/05/Straw-man-Normative-Annex-X-Investment-Criteria.docx) (.docx)
* [Energy Star Portfolio Manager](https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager) (link)
* Normative Annex Z. (Part 1).

# Comments Specific to this Draft

This draft includes proposed additions to normative annex Z (part 2). Normative annex Z has been developed to provide detailed administrative instructions specific to Washington law, as well as to create reporting specifications that will be implemented by commerce (AHJ).

Numbering of sections may change. Complete review of numbering will be required as part of developing a comprehensive final draft of the standard.

Thank you for your consideration.

**Appendix Z, Washington State Reporting Requirements (Part 2)**

**Form F. Documentation of a building of historic significance.**

**Energy efficiency measure exemptions for historic buildings.** No individual energy efficiency measure identified by energy efficiency audits need be implemented if it would compromise the historical integrity of a building or part of a building. Buildings owners seeking this exception shall provide the following documentation. Certified historic buildings are not exempt from the other requirements of this standard.

**Plan for Compliance.** The owner of a qualifying historic building shall have the plan for compliance with RCW 19.27A.210 evaluated by a qualified historic preservationist, as defined in the Code of Federal Regulations, 36 CFR Part 61, identifying any energy efficiency requirement that may compromise the historic integrity of the building or part of the building. Any element of the plan identified to compromise the historic integrity of the building or part of the building shall be omitted from the compliance plan. Evidence of this evaluation must be submitted to the AHJ for approval.

**Documentation of a historic building.** Building owners must provide documentation to the AHJ that proves its historic identification or eligibility. Valid documentation from any existing programs listed below is acceptable.

Examples of existing programs that verify historic property include:

(A) The National Register of Historic Places;

(B) The Washington Heritage Register;

(C) Properties that are identified by the department of archaeology and historic preservation (DAHP) to be eligible for listing in either one of these registers; and

(D) Properties which are listed in a local register of historic places.

(E) Or other documentation approved by the AHJ.

**Z4 Notice of Violation of Non-Compliance, Fines, Mitigation, and Appeals.**

**Z4.1 Authorization.** Failure to submit documentation demonstrating compliance with the standard by the scheduled reporting date will result in progressive penalties by legal notice. The AHJ is authorized to impose an administrative penalty upon a building owner for failing to submit documentation demonstrating compliance with the requirements of this section. The penalty may not exceed an amount equal to five thousand dollars 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 one dollar per year per gross square foot of floor area. The department may by rule increase the maximum penalty rates to adjust for the effects of inflation. To respond to a notice a building owner may submit an appeal requesting mitigation of the penalty.

**Z4.2 Notice of Non-Compliance (First Notice).**

Building owners of non-complying covered buildings shall respond to a Notice of Non-Compliance within thirty (30) calendar days from the date of notice. Administrative Penalties as described in Section Z4.5 will be assessed. Failure to respond will result in Section Z4.3 Notice of Violation.

To respond to a Notice of Non-Compliance, a building owner shall submit an application for exemption in accordance with Section Z2.1 if applicable, a Preliminary Mitigation Plan in accordance with Z4.6.2.1, or an intent to pay maximum administrative penalty.

**Z4.3 Notice of Violation (Second Notice).**

Building owners of non-complying covered buildings shall respond to a Notice of Violation within sixty (60) calendar days from the date of Z4.2 Notice of Non-Compliance. Administrative Penalties as described in Section Z4.5 will be assessed. Failure to respond will result in Section Z4.4 Notice of Penalty Enforcement.

To respond to a Notice of Violation a building owner shall submit application for exemption in accordance with Section Z2.1 if applicable, a Preliminary Mitigation Plan in accordance with Z4.6.2.1, or an intent to pay maximum administrative penalty.

**Z4.4 Notice of Penalty Enforcement (Final Notice).**

Building owners of non-complying covered buildings shall respond to a Notice of Penalty within one hundred twenty (120) calendar days from the date of Z4.2 Notice of Non-Compliance. Failure to respond will result in a fine assessed in accordance with Section Z4.5 Administrative Penalties. To respond to a Notice of Penalty Enforcement, a building owner shall pay the penalty, or submit a request for administrative appeal. To request an administrative appeal see Section Z4.7 Administrative Appeals.

**Z4.5 Administrative Penalties**

Failure to submit documentation demonstrating compliance with the standard by the scheduled reporting date will result in Penalty Enforcement with assessed penalties. The department may by rule increase the penalty rates to adjust for the effects of inflation. Penalties will be assessed after the buildings scheduled compliance deadline based on the following;

(a)For building owners who respond by submitting a mitigation plan daily fines are assessed from the scheduled compliance date to the date of approval of Compliance or Conditional Compliance and are assessed at an amount not to exceed 30% of five thousand dollars plus a daily amount equal to $0.20 per gross square foot of floor area per year.

(b) Failure to respond to Notice of Penalty Enforcement within sixty (60) calendar days will result in maximum penalty enforcement equal to five thousand dollars plus one dollar per gross square foot of floor area per year. When paid within one hundred and eighty days (180) the maximum penalty shall not exceed fines assessed over one year. .

A check or money order payable in U.S. funds to the Washington State Department of Commerce can be mailed to:

Washington State Department of Commerce

Re: Clean Buildings Initiative, Energy Division

P.O. Box 42525

Olympia, WA 98504-2525

**Z 4.6 Non Compliance Mitigation Plan.**

**Z 4.6.1. Request of Intent to Mitigate.** Building owners shall submit a request of intent to mitigate non-compliance using the format provided by the AHJ after receipt of Z4.2 Notice of Non-Compliance or Z4.3 Notice of Violation to avoid continued notification or immediate enforcement of the maximum Administrative Penalty in accordance with Z4.5.

**Z4.6.2 Mitigation Plan.** The mitigation plan shall be submitted to the AHJ in the format provided by the AHJ and is subject to administrative penalties in accordance with Z4.5.

**Z4.6.2.1 Preliminary Mitigation Plan.** The building owner shall submit one of the following as applicable to the building;

(a) When demonstrating compliance with Section Z2.2, forms A, B and C.

(b) When demonstrating compliance with Sections Z2.4 or Z2.5, forms A,B and C and a plan for audits, economic evaluation and completion as documented using Energy Audit Report, Level 2 Energy Audit, Level 3, Economic Evaluation of EEMs and Continued Reporting Until Completion as specified in Section 2.6.

**Z4.6.2.2 Mitigation Completion.** To demonstrate completion, the building owner shall complete all of the requirements of this standard and submit documentation as required by section Z2.4 or Z2.5. Upon completion the AHJ shall issue the final penalty assessed as specified by Z 4.5.

**Z4.7, Administrative Appeals**

Notice of Penalty Enforcement may be appealed. All appeals will be reviewed by the AHJ.

Administrative review appeals shall be submitted in a form specified by AHJ within sixty (60) calendar days from the date Z4.2. Notice of Non-Compliance (First Notice).

The following should be included when appealing a Notice of Penalty Enforcement:

(a) Washington State Building ID

(b) Submit Annex Z Forms A, B and C

Following the AHJ Administrative Review, all denied appeals have the right to appeal to the Administrative Law Judge (ALJ) according to WAC 388-02-0010. Appellants must request in a hearing to the Office of Administrative hearings (OAH), which is a state agency.

A hearing means a proceeding before an ALJ or review judge that gives a party an opportunity to be heard in disputes about department programs. \*Chapter 34.05 RCW, the Administrative Procedure Act, Title 388 of the Washington Administrative Code (WAC), chapter 10-08 WAC.