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HOUSE BILL 1289

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State of Washington

64th Legislature

2015 Regular Session

By Representatives Buys, Takko, Short, and Blake

Read first time 01/16/15. Referred to Committee on Technology & Economic Development.

1 AN ACT Relating to the procedure for adoption and amendment of  
2 the Washington state energy code; and amending RCW 19.27A.020,  
3 19.27A.025, 19.27A.045, and 19.27A.140.

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

5 **Sec. 1.** RCW 19.27A.020 and 2010 c 271 s 304 are each amended to  
6 read as follows:

7 (1) The legislature finds that the state building code council  
8 (~~shall adopt rules to be known as the Washington state energy code~~  
9 ~~as part of the state building code~~) adopted and amended by rule the  
10 2012 Washington state energy code published by the International Code  
11 Council, Inc. The legislature also finds that this code, which is to  
12 be known as the Washington state energy code and is part of the state  
13 building code adopted in chapter 19.27 RCW, was based on the 2012  
14 international energy conservation code.

15 (2) The council (~~shall~~) must follow the legislature's standards  
16 set forth in this section (~~to~~) and must adopt rules to be known as  
17 the Washington state energy code. The Washington state energy code  
18 shall be designed to:

19 (a) Construct increasingly energy efficient homes and buildings  
20 that help achieve the broader goal of building zero fossil-fuel  
21 greenhouse gas emission homes and buildings by the year 2031;

1 (b) Require new buildings to meet a certain level of energy  
2 efficiency, but allow flexibility in building design, construction,  
3 and heating equipment efficiencies within that framework; and

4 (c) Allow space heating equipment efficiency to offset or  
5 substitute for building envelope thermal performance.

6 (3) The Washington state energy code (~~(shall)~~) must take into  
7 account regional climatic conditions. Climate zone 1 (~~(shall)~~)  
8 includes all counties not included in climate zone 2. Climate zone 2  
9 includes: Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln,  
10 Okanogan, Pend Oreille, Spokane, Stevens, and Whitman counties.

11 (4) The minimum Washington state energy code for residential and  
12 nonresidential buildings (~~(shall be)~~) is the (~~(2006 edition of the~~  
13 ~~Washington state energy code, or)~~) 2012 Washington state energy code,  
14 as published by the International Code Council, Inc. and as amended  
15 by rule by the council.

16 (~~(The minimum state energy code for new nonresidential~~  
17 ~~buildings shall be the Washington state energy code, 2006 edition, or~~  
18 ~~as amended by the council by rule.~~

19 ~~(6))~~(a) Except as provided in (b) of this subsection, the  
20 Washington state energy code for residential structures shall preempt  
21 the residential energy code of each city, town, and county in the  
22 state of Washington.

23 (b) The state energy code for residential structures does not  
24 preempt a city, town, or county's energy code for residential  
25 structures which exceeds the requirements of the state energy code  
26 and which was adopted by the city, town, or county prior to March 1,  
27 1990. Such cities, towns, or counties may not subsequently amend  
28 their energy code for residential structures to exceed the  
29 requirements adopted prior to March 1, 1990.

30 (~~(7))~~) (6) The state building code council (~~(shall)~~) must  
31 consult with the department of (~~(general administration)~~) enterprise  
32 services as provided in RCW 34.05.310 prior to publication of  
33 proposed rules. The director of the department of (~~(general~~  
34 ~~administration shall)~~) enterprise services must recommend to the  
35 state building code council any changes necessary to conform the  
36 proposed rules to the requirements of this section.

37 (~~(8)~~) ~~The state building code council shall evaluate and consider~~  
38 ~~adoption of the international energy conservation code in Washington~~  
39 ~~state in place of the existing state energy code.~~

1       ~~(9))~~ (7) The definitions in RCW 19.27A.140 apply throughout this  
2 section.

3       **Sec. 2.** RCW 19.27A.025 and 1991 c 122 s 3 are each amended to  
4 read as follows:

5       (1) The minimum state energy code for new nonresidential  
6 buildings ~~((shall be))~~ is the ~~((Washington state energy code, 1986~~  
7 ~~edition, as amended))~~ 2012 Washington state energy code, as published  
8 by the International Code Council, Inc. and as amended by the state  
9 building code council. The ~~((state building code))~~ council may, by  
10 rule adopted pursuant to chapter 34.05 RCW, amend ~~((that code's))~~ the  
11 requirements of the code for new nonresidential buildings ~~((provided~~  
12 ~~that))~~ if:

13       (a) ~~((Such))~~ The amendments increase the energy efficiency of  
14 typical newly constructed nonresidential buildings and maintain and  
15 promote a competitive business climate based on an evaluation of  
16 economic, technical, and process factors; and

17       (b) Any new measures, standards, or requirements adopted ~~((must~~  
18 ~~be))~~ as amendments to the Washington state energy code are  
19 technically feasible, commercially available, ((and)) cost-effective  
20 to building owners and tenants, and based upon an analysis, comments  
21 from owners and tenants, and conclusions by the council that the  
22 criteria of this subsection (1)(b) are met.

23       (2) The council, beginning with the development of the 2018  
24 international energy conservation code, must endeavor to reduce the  
25 number of state amendments made to subsequent adoptions of new  
26 editions of the international energy conservation code by advocating  
27 for and submitting all proposed state amendments to the international  
28 code council during the model code development process that occurs  
29 prior to its adoption. The council must consider the documentation  
30 and results of the model code development process during the rule-  
31 making process for the adoption of new requirements to the Washington  
32 state energy code.

33       (3)(a) Any person may propose one or more amendments to the  
34 Washington state energy code after the council files a statement of  
35 inquiry in accordance with RCW 34.05.310. The proponent of an  
36 amendment must indicate the amount of energy efficiency gained due to  
37 the proposed amendment and must use the cost/benefit methodology  
38 specified in subsection (5) of this section.

1 (b) The proposed amendment must make one of the following  
2 assertions regarding the cost impact of the code change proposal: (i)  
3 The code change proposal will increase the cost of construction; or  
4 (ii) the code change proposal will not increase the cost of  
5 construction. The proponent of the amendment must submit information  
6 substantiating the assertion made in (b)(i) or (ii) of this  
7 subsection (3) to the council. This information must be considered by  
8 the council.

9 (c) Any proposal submitted that does not include the requisite  
10 cost information and percent of energy efficiency gained is  
11 incomplete and may not be considered by the council.

12 (4) The council must adopt rules consistent with chapter 19.85  
13 RCW, the regulatory fairness act. The council must also evaluate  
14 impacts resulting from adoption of the Washington state energy code  
15 based on the extent of disproportionate impacts on small businesses  
16 and reduce the costs imposed by the rule on small businesses.

17 (5) The council, prior to filing notice of a proposed rule under  
18 RCW 34.05.320, must evaluate all proposed amendments for their  
19 technical feasibility and cost-effectiveness according to national  
20 consensus standards. The purpose of the evaluation is to assess the  
21 impact of the proposed amendments to the code. Examples of the  
22 consensus standards include:

23 (a) ASTM E917 practice for measuring life-cycle costs of  
24 buildings and building systems;

25 (b) ASTM E1074 practice for measuring net benefits and net  
26 savings for investments in buildings and building systems; and

27 (c) ASTM E1121 practice for measuring payback for investments in  
28 buildings and building systems.

29 (6) A filing by the council under RCW 34.05.320 must include an  
30 analysis of the cost-effectiveness and the percent of energy  
31 efficiency increase gained by the cumulative effect of all the  
32 proposed amendments.

33 (7) Rules adopted by the council in accordance with this section  
34 are subject to RCW 34.05.328.

35 (8) In considering amendments to the state energy code for  
36 nonresidential buildings, the state building code council (~~shall~~)  
37 must establish and consult with a technical advisory committee  
38 (~~including~~) that includes representatives of appropriate state  
39 agencies, local governments, general contractors, building owners and

1 managers, design professionals, utilities, manufacturers, and other  
2 interested and affected parties.

3 ~~((3))~~ (9) Decisions to amend the Washington state energy code  
4 for new nonresidential buildings ~~((shall))~~ must be made prior to  
5 December 15th of any year and ~~((shall))~~ may not take effect before  
6 the end of the regular legislative session in the ~~((next))~~ subsequent  
7 year. Any disputed provisions within an amendment presented to the  
8 legislature ~~((shall))~~ must be approved by the legislature before  
9 going into effect. A disputed provision is one ~~((which))~~ that was  
10 adopted by the state building code council with less than a two-  
11 thirds majority vote. Substantial amendments to the code ~~((shall))~~  
12 may be adopted no more frequently than every three years.

13 **Sec. 3.** RCW 19.27A.045 and 1990 c 2 s 5 are each amended to read  
14 as follows:

15 ~~((The state building code council shall maintain the state energy  
16 code for residential structures in a status which is consistent with  
17 the state's interest as set forth in section 1, chapter 2, Laws of  
18 1990. In maintaining the Washington state energy code for residential  
19 structures, beginning in 1996 the council shall review the Washington  
20 state energy code every three years. After January 1, 1996, by rule  
21 adopted pursuant to chapter 34.05 RCW, the council may amend any  
22 provisions of the Washington state energy code to increase the energy  
23 efficiency of newly constructed residential buildings. Decisions to  
24 amend the Washington state energy code for residential structures  
25 shall be made prior to December 1 of any year and shall not take  
26 effect before the end of the regular legislative session in the next  
27 year.))~~ (1) The minimum state energy code for new residential

28 buildings is the 2012 Washington state energy code, as published by  
29 the International Code Council, Inc. and as amended by the state  
30 building code council. The council may, by rule adopted pursuant to  
31 chapter 34.05 RCW, amend the requirements of the code for new  
32 residential buildings if:

33 (a) The amendments increase the energy efficiency of typical  
34 newly constructed residential buildings and maintain and promote a  
35 competitive business climate to build a strong Washington economy;  
36 and

37 (b) Any new measures, standards, or requirements adopted as  
38 amendments to the Washington state energy code are technically

1 feasible, commercially available, and cost-effective to building  
2 owners and tenants.

3 (2) The council, beginning with the development of the 2018  
4 international energy conservation code, must endeavor to reduce the  
5 number of state amendments made to subsequent adoptions of new  
6 editions of the international energy conservation code by advocating  
7 for and submitting all proposed state amendments to the international  
8 code council during the model code development process that occurs  
9 prior to its adoption. The council must consider the documentation  
10 and results of the model code development process during the rule-  
11 making process for the adoption of new requirements to the Washington  
12 state energy code.

13 (3)(a) Any person may propose one or more amendments to the  
14 Washington state energy code after the council files a statement of  
15 inquiry in accordance with RCW 34.05.310. The proponent of an  
16 amendment must indicate the amount of energy efficiency gained due to  
17 the proposed amendment and must use the cost/benefit methodology  
18 specified in subsection (5) of this section.

19 (b) The proposed amendment must make one of the following  
20 assertions regarding the cost impact of the code change proposal: (i)  
21 The code change proposal will increase the cost of construction; or  
22 (ii) the code change proposal will not increase the cost of  
23 construction. The proponent of the amendment must submit information  
24 substantiating the assertion made in (b)(i) or (ii) of this  
25 subsection (3) to the council. This information must be considered by  
26 the council.

27 (c) Any proposal submitted that does not include the requisite  
28 cost information and percent of energy efficiency gained is  
29 incomplete and may not be considered by the council.

30 (4) The council must adopt rules consistent with chapter 19.85  
31 RCW, the regulatory fairness act. The council must also evaluate  
32 impacts resulting from adoption of the Washington energy code based  
33 on the extent of disproportionate impacts on small businesses and  
34 reduce the costs imposed by the rule on small businesses.

35 (5) The council, prior to filing notice of a proposed rule under  
36 RCW 34.05.320, must evaluate all proposed amendments for their  
37 technical feasibility and cost-effectiveness according to national  
38 consensus standards. The purpose of the evaluation is to assess the  
39 impact of the proposed amendments to the code. Examples of the  
40 consensus standards include:

1 (a) ASTM E917 practice for measuring life-cycle costs of  
2 buildings and building systems;

3 (b) ASTM E1074 practice for measuring net benefits and net  
4 savings for investments in buildings and building systems; and

5 (c) ASTM E1121 practice for measuring payback for investments in  
6 buildings and building systems.

7 (6) A filing by the council under RCW 34.05.320 must include an  
8 analysis of the cost-effectiveness and the percent of energy  
9 efficiency increase gained by the cumulative effect of all the  
10 proposed amendments.

11 (7) Rules adopted by the council in accordance with this section  
12 are subject to RCW 34.05.328.

13 (8) In considering amendments to the Washington state energy code  
14 for residential buildings, the council must establish and consult  
15 with a technical advisory committee that includes representatives of  
16 appropriate state agencies, local governments, general contractors,  
17 building owners and managers, design professionals, utilities,  
18 manufacturers, and other interested and affected parties.

19 (9) Decisions to amend the Washington state energy code for new  
20 residential buildings must be made prior to December 15th of any year  
21 and may not take effect before the end of the regular legislative  
22 session in the subsequent year. Any disputed provisions within an  
23 amendment presented to the legislature must be approved by the  
24 legislature before going into effect. A disputed provision is one  
25 that was adopted by the council with less than a two-thirds majority  
26 vote. Substantial amendments to the code may be adopted no more  
27 frequently than every three years.

28 **Sec. 4.** RCW 19.27A.140 and 2011 1st sp.s. c 43 s 245 are each  
29 amended to read as follows:

30 The definitions in this section apply to RCW 19.27A.020,  
31 19.27A.025, 19.27A.045, and 19.27A.130 through 19.27A.190 ((and  
32 19.27A.020)) unless the context clearly requires otherwise.

33 (1) "Benchmark" means the energy used by a facility as recorded  
34 monthly for at least one year and the facility characteristics  
35 information inputs required for a portfolio manager.

36 (2) "Conditioned space" means conditioned space, as defined in  
37 the Washington state energy code.

38 (3) "Consumer-owned utility" includes a municipal electric  
39 utility formed under Title 35 RCW, a public utility district formed

1 under Title 54 RCW, an irrigation district formed under chapter 87.03  
2 RCW, a cooperative formed under chapter 23.86 RCW, a mutual  
3 corporation or association formed under chapter 24.06 RCW, a port  
4 district formed under Title 53 RCW, or a water-sewer district formed  
5 under Title 57 RCW, that is engaged in the business of distributing  
6 electricity to one or more retail electric customers in the state.

7 (4) "Cost-effectiveness" means that a project or resource is  
8 forecast:

9 (a) To be reliable and available within the time it is needed;  
10 and

11 (b) To meet or reduce the power demand of the intended consumers  
12 at an estimated incremental system cost no greater than that of the  
13 least-cost similarly reliable and available alternative project or  
14 resource, or any combination thereof.

15 (5) "Council" means the state building code council.

16 (6) "Embodied energy" means the total amount of fossil fuel  
17 energy consumed to extract raw materials and to manufacture,  
18 assemble, transport, and install the materials in a building and the  
19 life-cycle cost benefits including the recyclability and energy  
20 efficiencies with respect to building materials, taking into account  
21 the total sum of current values for the costs of investment, capital,  
22 installation, operating, maintenance, and replacement as estimated  
23 for the lifetime of the product or project.

24 (7) "Energy consumption data" means the monthly amount of energy  
25 consumed by a customer as recorded by the applicable energy meter for  
26 the most recent twelve-month period.

27 (8) "Energy service company" has the same meaning as in RCW  
28 43.19.670.

29 (9) "Enterprise services" means the department of enterprise  
30 services.

31 (10) "Greenhouse gas" and "greenhouse gases" includes carbon  
32 dioxide, methane, nitrous oxide, hydrofluorocarbons,  
33 perfluorocarbons, and sulfur hexafluoride.

34 (11) "Investment grade energy audit" means an intensive  
35 engineering analysis of energy efficiency and management measures for  
36 the facility, net energy savings, and a cost-effectiveness  
37 determination.

38 (12) "Investor-owned utility" means a corporation owned by  
39 investors that meets the definition of "corporation" as defined in  
40 RCW 80.04.010 and is engaged in distributing either electricity or

1 natural gas, or both, to more than one retail electric customer in  
2 the state.

3 (13) "Major facility" means any publicly owned or leased  
4 building, or a group of such buildings at a single site, having ten  
5 thousand square feet or more of conditioned floor space.

6 (14) "National energy performance rating" means the score  
7 provided by the energy star program, to indicate the energy  
8 efficiency performance of the building compared to similar buildings  
9 in that climate as defined in the United States environmental  
10 protection agency "ENERGY STAR® Performance Ratings Technical  
11 Methodology."

12 (15) "Net zero energy use" means a building with net energy  
13 consumption of zero over a typical year.

14 (16) "Portfolio manager" means the United States environmental  
15 protection agency's energy star portfolio manager or an equivalent  
16 tool adopted by the department of enterprise services.

17 (17) "Preliminary energy audit" means a quick evaluation by an  
18 energy service company of the energy savings potential of a building.

19 (18) "Qualifying public agency" includes all state agencies,  
20 colleges, and universities.

21 (19) "Qualifying utility" means a consumer-owned or investor-  
22 owned gas or electric utility that serves more than twenty-five  
23 thousand customers in the state of Washington.

24 (20) "Reporting public facility" means any of the following:

25 (a) A building or structure, or a group of buildings or  
26 structures at a single site, owned by a qualifying public agency,  
27 that exceed ten thousand square feet of conditioned space;

28 (b) Buildings, structures, or spaces leased by a qualifying  
29 public agency that exceeds ten thousand square feet of conditioned  
30 space, where the qualifying public agency purchases energy directly  
31 from the investor-owned or consumer-owned utility;

32 (c) A wastewater treatment facility owned by a qualifying public  
33 agency; or

34 (d) Other facilities selected by the qualifying public agency.

35 (21) "State portfolio manager master account" means a portfolio  
36 manager account established to provide a single shared portfolio that  
37 includes reports for all the reporting public facilities.

38 (22) "Economic factors" means either: (a) The cost of  
39 constructing to a new Washington state energy code requirement  
40 exceeds by five percent the cost of constructing to the current

1 energy code requirement; or (b) the expected energy savings from the  
2 energy code requirement will not recuperate the cost of the energy  
3 code requirement to the property owner within a seven-year period.

4 (23) "Process factors" means that the Washington state energy  
5 code requirement does not conflict with other health or safety  
6 requirements in other code measures, is a code requirement that does  
7 not create an additional cost for enforcement, is a method readily  
8 available to consumers in the local marketplace, and has been tested  
9 to meet nationally recognized consensus standards.

10 (24) "Technological factors" means that the products necessary to  
11 meet a Washington state energy code requirement are readily available  
12 in private sector building construction businesses or are  
13 commercially available.

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