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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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) In considering amendments to the state energy code for nonresidential buildings, the state building code council ((~~shall~~))must establish and consult with a technical advisory committee ((~~including~~))that includes representatives of appropriate state agencies, local governments, general contractors, building owners and managers, design professionals, utilities, manufacturers, and other interested and affected parties.

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

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

((~~The state building code council shall maintain the state energy code for residential structures in a status which is consistent with the state's interest as set forth in section 1, chapter 2, Laws of 1990. In maintaining the Washington state energy code for residential structures, beginning in 1996 the council shall review the Washington state energy code every three years. After January 1, 1996, by rule adopted pursuant to chapter 34.05 RCW, the council may amend any provisions of the Washington state energy code to increase the energy efficiency of newly constructed residential buildings. Decisions to amend the Washington state energy code for residential structures shall be made prior to December 1 of any year and shall not take effect before the end of the regular legislative session in the next year.~~))(1) The minimum state energy code for new residential buildings is the 2012 Washington state energy code, as published by the International Code Council, Inc. and as amended by the state building code council. The council may, by rule adopted pursuant to chapter 34.05 RCW, amend the requirements of the code for new residential buildings if:

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

(b) Any new measures, standards, or requirements adopted as amendments to the Washington state energy code are technically feasible, commercially available, and cost-effective to building owners and tenants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) "Consumer-owned utility" includes a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, a port district formed under Title 53 RCW, or a water-sewer district formed under Title 57 RCW, that is engaged in the business of distributing electricity to one or more retail electric customers in the state.

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

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

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

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

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

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

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

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

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

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

(12) "Investor-owned utility" means a corporation owned by investors that meets the definition of "corporation" as defined in RCW 80.04.010 and is engaged in distributing either electricity or natural gas, or both, to more than one retail electric customer in the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) "Economic factors" means either: (a) The cost of constructing to a new Washington state energy code requirement exceeds by five percent the cost of constructing to the current energy code requirement; or (b) the expected energy savings from the energy code requirement will not recuperate the cost of the energy code requirement to the property owner within a seven-year period.

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

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

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