
**Technology & Economic Development
Committee**

ESSB 5804

Brief Description: Modifying the procedure for adoption and amendment of the Washington state energy code.

Sponsors: Senate Committee on Government Operations & Security (originally sponsored by Senators Liias, Benton, Hasegawa, Dammeier and Angel).

Brief Summary of Engrossed Substitute Bill

- Establishes that the energy code for residential and non-residential buildings is the 2012 Washington State Energy Code (Code), as published by the International Code Council, Inc., and as amended by the State Building Council (Council).
- Establishes new requirements for the adoption and amendment of the Code for both residential and non-residential buildings, including requiring the Council to work with stakeholders to develop a multi-tier process for the review of amendments.
- Beginning with the development of the 2018 Code, directs the Council to endeavor to reduce the number of amendments it processes.
- Clarifies the requirement of the Council to make a determination of the technological, economic, and process factors for each Code update and determine whether or not those factors would significantly impede adoption of a Code update that incrementally meets the energy reduction target of 70 percent by 2031.
- Establishes amendments to the Code for either residential or non-residential buildings as significant legislative rules under Chapter 34.05 RCW, the Administrative Procedure Act.
- Requires the Council to adopt rules that are consistent with Chapter 19.85 RCW, the Regulatory Fairness Act.

Hearing Date: 4/1/15

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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Background:

State Energy Code.

The Washington State Energy Code (Code) is part of the State Building Code, which sets the minimum construction requirements for buildings in the state. The Code provides a minimum level of energy efficiency for residential and non-residential buildings, but allows flexibility in building design, construction, and heating equipment efficiencies. The State Building Code Council (Council) maintains the Code. Unless otherwise amended by rule, the Code must reflect the 2006 edition.

The State Energy Code for residential structures preempts the residential code of each local jurisdiction, except where the local jurisdiction's residential code exceeds the requirements of the Code and was adopted before March 1, 1990.

International Energy Conservation Code.

The International Energy Conservation Code (IECC) is published by the International Code Council, Inc., a non-profit organization that develops comprehensive and coordinated national model construction codes. The IECC was last updated in 2012 and is reviewed and amended every three years. The 2012 IECC contains separate provisions for residential and non-residential buildings.

Adoption and Amendment Requirements for the State Energy Code.

The Council may amend the Code by rule if the amendments increase energy efficiency and if, for non-residential buildings, the amendments are technically feasible, commercially available, and cost-effective to building owners and tenants. Updates to the Code must also consider regional climatic conditions. The Code was last amended in 2013, when the Council adopted the 2012 IECC by rule for both residential and non-residential buildings.

The Council reviews, updates, and adopts new model state building codes, including state energy codes, every three years. The Council must adopt updates to the Code from 2013 through 2031 that move incrementally toward a 70 percent reduction in annual net energy use by both residential and non-residential buildings by 2031, using the adopted 2006 Washington State Energy Code as a baseline. If the Council determines that economic, technological, or process factors would significantly impede adoption of a Code update that meets the energy reduction target, it may defer implementation of the proposed Code update and must report its findings to the Legislature by December 31 of the year prior to the year in which the update would otherwise be enacted.

Rulemaking under the Administrative Procedure Act.

The Administrative Procedure Act (APA) details requirements that must be satisfied in order for an agency to adopt a significant legislative rule. A significant legislative rule is one that:

- adopts substantive provisions of law, the violation of which subjects the violator to a penalty or sanction;
- establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or

- adopts a new policy or regulatory program, or makes significant amendments to a policy or regulatory program.

Significant legislative rules do not include emergency rules, procedural rules, interpretative rules, or rules adopted through expedited rulemaking. Examples of the requirements for adoption of a significant legislative rule include a cost-benefit analysis, a determination of whether the rules impose more stringent requirements on private entities than on public entities, and a determination of whether the rule differs from federal regulations and law.

The Regulatory Fairness Act and Small Business Economic Impact Statements.

Under the Regulatory Fairness Act (RFA), an agency must develop a small business economic impact statement (SBEIS) if a rule it is adopting under the APA will impose more than minor costs on businesses in an industry, or if an agency is requested to do so by the Joint Administrative Rules Review Committee of the Legislature.

If an SBEIS shows that a rule will have a disproportionate impact on small businesses, the agency must, where legal and feasible, reduce the costs imposed by the rule on small businesses. The SBEIS must list the steps taken to reduce the costs on small businesses or a reasonable justification for not doing so.

The RFA defines "small business" as a business entity, including a sole proprietorship, corporation, partnership, or other legal entity that is owned and operated independently from all other businesses and has 50 or fewer employees.

Summary of Bill:

State Energy Code.

The minimum energy code for residential and non-residential buildings is the 2012 Washington State Energy Code (Code), as published by the International Code Council, Inc., and as amended by the State Building Code Council (Council).

The preemption exception for certain local residential energy codes is removed.

Adoption and Amendment Requirements for the State Energy Code for Residential Buildings.

The Code for residential buildings is amended to align with the Code for non-residential buildings. Future amendments to the Code for residential buildings may be adopted if the amendments:

- increase the energy efficiency of typical, newly constructed residential buildings; and
- are technically feasible, commercially available, and cost-effective to building owners and tenants.

In considering amendments to the Code for residential buildings, the Council must establish and consult with a technical advisory committee that includes the following:

- representatives of appropriate state agencies;
- local governments;
- general contractors;
- building owners and managers;
- design professionals;

- utilities;
- manufacturers; and
- other interested parties.

Decisions to amend the Code for residential buildings must be made prior to December 15 of any year and may not take effect before the end of the regular legislative session in the subsequent year. Substantial amendments to the Code may be adopted no more frequently than every three years.

Adoption and Amendment Requirements for the State Energy Code for Both Residential and Non-Residential Buildings.

Any new measures, standards, or requirements adopted as amendments to the Code must be based upon an analysis, comments from owners and tenants as well as other stakeholders, and conclusions by the Council on whether the amendments are technically feasible, commercially available, and cost-effective. The Council must make a determination of the technological, economic, and process factors for each update and determine whether or not those factors would significantly impede adoption of a Code update that incrementally meets the energy reduction target of 70 percent by 2031.

Beginning with the development of the 2018 State Energy Code, the Council must endeavor to reduce the number of amendments it processes. Stakeholders are encouraged but not required to take concepts and ideas as well as proposed amendments through the International Code Council's model energy code update process.

Any person may propose an amendment to the Code after the Council files a statement of inquiry in accordance with the Administrative Procedure Act (APA). The proponent of a proposed amendment must indicate the amount of energy efficiency gained due to the proposed amendment and must provide cost-benefit data.

The Council must work with stakeholders to develop a multi-tier process for the review of amendments to the Code. Only complete amendments may move forward for the Council's review of substantial amendments to the Code. Incomplete amendments and ideas must be reviewed separately from the review of substantial amendments to the Code. The Council must also work with stakeholders to evaluate various consensus economic methodologies for evaluating the cost-benefit impact of substantial amendments to the Code and other codes adopted to the State Building Code.

Prior to filing notice of a proposed rule under the APA, the Council must evaluate all proposed amendments for their technical feasibility and cost-effectiveness. Any proposal submitted that does not include the requisite cost and energy efficiency information may not be considered by the Council.

The Council may only take final action on amendments that have been fully vetted by a technical advisory group or specifically included on a notice for public hearing.

Rulemaking under the Administrative Procedure Act.

Amendments to the Code, adopted by rule, for either residential or non-residential buildings constitute significant legislative rules.

Rulemaking Consistent with the Regulatory Fairness Act.

The Council must adopt rules consistent with the Regulatory Fairness Act. The Council must evaluate impacts of adopting the Code on small businesses and reduce the costs imposed on small businesses.

Appropriation: None.

Fiscal Note: Requested on March 26, 2015.

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