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SECOND SUBSTITUTE HOUSE BILL 1622

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State of Washington                      65th Legislature                      2018 Regular Session

By House Appropriations (originally sponsored by Representatives Senn, Springer, Tharinger, Ormsby, and Fey)

READ FIRST TIME 01/24/18.

1            AN ACT Relating to the state building code council; amending RCW  
2 19.27.015, 19.27.035, 19.27.070, 19.27.074, 19.27.085, 19.27A.020,  
3 and 18.08.240; reenacting and amending RCW 34.05.328; adding a new  
4 section to chapter 19.27 RCW; and adding a new section to chapter  
5 18.08 RCW.

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

7            **Sec. 1.** RCW 19.27.015 and 2009 c 362 s 2 are each amended to  
8 read as follows:

9            As used in this chapter:

10            (1) "Agricultural structure" means a structure designed and  
11 constructed to house farm implements, hay, grain, poultry, livestock,  
12 or other horticultural products. This structure may not be a place of  
13 human habitation or a place of employment where agricultural products  
14 are processed, treated, or packaged, nor may it be a place used by  
15 the public((+)).

16            (2) "City" means a city or town((+)).

17            (3) "Commercial building permit" means a building permit issued  
18 by a city or a county to construct, enlarge, alter, repair, move,  
19 demolish, or change the occupancy of any building not covered by a  
20 residential building permit.

1       (4) "Multifamily residential building" means common wall  
2 residential buildings that consist of four or fewer units, that do  
3 not exceed two stories in height, that are less than five thousand  
4 square feet in area, and that have a one-hour fire-resistive  
5 occupancy separation between units(~~(; and)~~).

6       (~~(4)~~) (5) "Residential building permit" means a building permit  
7 issued by a city or a county to construct, enlarge, alter, repair,  
8 move, demolish, or change the occupancy of any building containing  
9 only dwelling units used for independent living of one or more  
10 persons including permanent provisions for living, sleeping, eating,  
11 cooking, and sanitation, and structures accessory to dwelling units,  
12 such as detached garages and storage buildings.

13       (6) "Temporary growing structure" means a structure that has the  
14 sides and roof covered with polyethylene, polyvinyl, or similar  
15 flexible synthetic material and is used to provide plants with either  
16 frost protection or increased heat retention.

17       **Sec. 2.** RCW 19.27.035 and 1989 c 266 s 6 are each amended to  
18 read as follows:

19       The building code council shall(~~(, within one year of July 23,~~  
20 ~~1989)~~):

21       (1) By July 1, 2019, adopt a revised process for the review of  
22 proposed statewide amendments to the codes enumerated in RCW  
23 19.27.031(~~(;)~~); and

24       (2) Adopt a process for the review of proposed or enacted local  
25 amendments to the codes enumerated in RCW 19.27.031 as amended and  
26 adopted by the state building code council.

27       **Sec. 3.** RCW 19.27.070 and 2011 1st sp.s. c 43 s 244 are each  
28 amended to read as follows:

29       There is hereby established in the department of enterprise  
30 services a state building code council, to be appointed by the  
31 governor.

32       (1) The state building code council shall consist of fifteen  
33 members:

34       (a) Two members must be county elected legislative body members  
35 or elected executives;

36       (b) Two members must be city elected legislative body members or  
37 mayors;

1 (c) One member must be a local government building code  
2 enforcement official;

3 (d) One member must be a local government fire service official;

4 (e) One member must be a person with a physical disability and  
5 shall represent the disability community;

6 (f) One member, who is not eligible for membership on the council  
7 in any other capacity, and who has not previously been nominated or  
8 appointed to the council to represent any other group, must represent  
9 the general public; and

10 (g) Seven members must represent the private sector or  
11 professional organizations as follows:

12 (i) One member shall represent general construction, specializing  
13 in commercial and industrial building construction;

14 ~~((f))~~ (ii) One member shall represent general construction,  
15 specializing in residential and multifamily building construction;

16 ~~((g))~~ (iii) One member shall represent the architectural design  
17 profession;

18 ~~((h))~~ (iv) One member shall represent the structural  
19 engineering profession;

20 ~~((i))~~ (v) One member shall represent the mechanical engineering  
21 profession;

22 ~~((j))~~ (vi) One member shall represent the construction building  
23 trades;

24 ~~((k))~~ (vii) One member shall represent manufacturers,  
25 installers, or suppliers of building materials and components(

26 ~~(l) One member must be a person with a physical disability and~~  
27 ~~shall represent the disability community; and~~

28 ~~(m) One member shall represent the general public)).~~

29 (2) At least six of these fifteen members shall reside east of  
30 the crest of the Cascade mountains.

31 (3) The council shall include: Two members of the house of  
32 representatives appointed by the speaker of the house, one from each  
33 caucus; two members of the senate appointed by the president of the  
34 senate, one from each caucus; and an employee of the electrical  
35 division of the department of labor and industries, as ex officio,  
36 nonvoting members with all other privileges and rights of membership.

37 (4)(a) Terms of office shall be for three years, or for so long  
38 as the member remains qualified for the appointment.

39 (b) The council shall elect a member to serve as chair of the  
40 council for one-year terms of office.

1 (c) Any member who is appointed by virtue of being an elected  
2 official or holding public employment shall be removed from the  
3 council if he or she ceases being such an elected official or holding  
4 such public employment.

5 (d)(i) Any member who is appointed to represent a specific  
6 private sector industry must maintain sufficiently similar employment  
7 or circumstances throughout the term of office to remain qualified to  
8 represent the specified industry. Retirement or unemployment is not  
9 cause for termination. However, if a councilmember enters into  
10 employment outside of the industry he or she has been appointed to  
11 represent, then he or she shall be removed from the council.

12 (ii) Any member who is appointed after the effective date of this  
13 section to represent a specific private sector industry must maintain  
14 sufficiently similar private sector employment or circumstances  
15 throughout the term of office to remain qualified to represent the  
16 specified industry. Retirement or unemployment is not cause for  
17 termination. However, if a councilmember appointed after the  
18 effective date of this section to represent a specific private sector  
19 industry enters into employment outside of the industry, or outside  
20 of the private sector, he or she has been appointed to represent,  
21 then he or she must be removed from the council.

22 (e) Any member who no longer qualifies for appointment under this  
23 section may not vote on council actions, but may participate as an ex  
24 officio, nonvoting member until a replacement member is appointed. A  
25 member must notify the council staff and the governor's office within  
26 thirty days of the date the member no longer qualifies for  
27 appointment under this section. The governor shall appoint a  
28 qualified replacement for the member within sixty days of notice.

29 (5) Before making any appointments to the building code council,  
30 the governor shall seek nominations from recognized organizations  
31 which represent the entities or interests identified in this section.  
32 The governor shall select appointees to represent private sector  
33 industries from a list of three nominations provided by the largest  
34 trade association representing the industry, unless no names are put  
35 forth by the trade association.

36 (6) Members shall not be compensated but shall receive  
37 reimbursement for travel expenses in accordance with RCW 43.03.050  
38 and 43.03.060.

39 ~~(7) ((The department of enterprise services shall provide~~  
40 ~~administrative and clerical assistance to the building code~~

1 ~~council.~~) For purposes of this section, a "professional  
2 organization" includes an entity whose members are engaged in a  
3 particular lawful vocation, occupation, or field of activity of a  
4 specialized nature, including but not limited to associations,  
5 boards, educational institutions, and nonprofit organizations.

6 **Sec. 4.** RCW 19.27.074 and 1989 c 266 s 3 are each amended to  
7 read as follows:

8 (1) The state building code council shall:

9 (a) Adopt and maintain the codes to which reference is made in  
10 RCW 19.27.031 in a status which is consistent with the state's  
11 interest as set forth in RCW 19.27.020. In maintaining these codes,  
12 the council shall regularly review updated versions of the codes  
13 referred to in RCW 19.27.031 and other pertinent information and  
14 shall amend the codes as deemed appropriate by the council;

15 (b) Approve or deny all county or city amendments to any code  
16 referred to in RCW 19.27.031 to the degree the amendments apply to  
17 single-family or multifamily residential buildings;

18 (c) As required by the legislature, develop and adopt any codes  
19 relating to buildings; and

20 (d) ~~((Propose a))~~ Approve a proposed budget for the operation of  
21 the state building code council to be submitted by the department of  
22 enterprise services to the office of financial management pursuant to  
23 RCW 43.88.090.

24 (2) The state building code council may:

25 (a) Appoint technical advisory committees which may include  
26 members of the council;

27 (b) ~~((Employ permanent and temporary staff and))~~ Approve  
28 contracts for services; and

29 (c) Conduct research into matters relating to any code or codes  
30 referred to in RCW 19.27.031 or any related matter.

31 (3) The department of enterprise services, with the advice and  
32 input from the members of the building code council, shall:

33 (a) Employ permanent and temporary staff and contract for  
34 services;

35 (b) Contract with an independent, third-party entity to perform a  
36 Washington energy code baseline economic analysis and economic  
37 analysis of code proposals; and

38 (c) Provide all administrative and information technology  
39 services required for the building code council.

1       (4) Rule-making authority as authorized in this chapter resides  
2 within the building code council.

3       (5)(a) All meetings of the state building code council shall be  
4 open to the public under the open public meetings act, chapter 42.30  
5 RCW. All actions of the state building code council which adopt or  
6 amend any code of statewide applicability shall be pursuant to the  
7 administrative procedure act, chapter 34.05 RCW.

8       (b) All council decisions relating to the codes enumerated in RCW  
9 19.27.031 shall require approval by at least a majority of the  
10 members of the council.

11       (c) All decisions to adopt or amend codes of statewide  
12 application shall be made prior to December 1 of any year and shall  
13 not take effect before the end of the regular legislative session in  
14 the next year.

15       **Sec. 5.** RCW 19.27.085 and 1989 c 256 s 1 are each amended to  
16 read as follows:

17       (1) There is hereby created the building code council account in  
18 the state treasury. Moneys deposited into the account shall be used  
19 by the building code council, after appropriation, to perform the  
20 purposes of the council.

21       (2) All moneys collected under subsection (3) of this section  
22 shall be deposited into the building code council account. Every four  
23 years the state treasurer shall report to the legislature on the  
24 balances in the account so that the legislature may adjust the  
25 charges imposed under subsection (3) of this section.

26       (3) There is imposed a fee of (~~four~~) six dollars and fifty  
27 cents on each residential building permit and a fee of twenty-five  
28 dollars for each commercial building permit, issued by a county or a  
29 city, plus an additional surcharge of two dollars for each  
30 residential unit, but not including the first unit, on each building  
31 containing more than one residential unit. Quarterly each county and  
32 city shall remit moneys collected under this section to the state  
33 treasury; however, no remittance is required until a minimum of fifty  
34 dollars has accumulated pursuant to this subsection.

35       NEW SECTION. **Sec. 6.** A new section is added to chapter 19.27  
36 RCW to read as follows:

37       The building code council in consultation with the office of the  
38 chief information officer shall assess the costs and benefits of the

1 potential acquisition and implementation of open public access  
2 information technologies to enhance the council's code adoption  
3 process and report back to the appropriate committees of the  
4 legislature by November 15, 2018.

5 **Sec. 7.** RCW 19.27A.020 and 2015 c 11 s 3 are each amended to  
6 read as follows:

7 (1) The state building code council in the department of  
8 enterprise services shall adopt rules to be known as the Washington  
9 state energy code as part of the state building code.

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

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

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

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

22 (3) The Washington state energy code shall take into account  
23 regional climatic conditions. One climate zone includes: Adams,  
24 Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield,  
25 Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille,  
26 Skamania, Spokane, Stevens, Walla Walla, Whitman, and Yakima  
27 counties. The other climate zone includes all other counties not  
28 listed in this subsection (3). The assignment of a county to a  
29 climate zone may not be changed by adoption of a model code or rule.  
30 Nothing in this section prohibits the council from adopting the same  
31 rules or standards for each climate zone.

32 (4) The Washington state energy code for residential buildings  
33 shall be the 2006 edition of the Washington state energy code, or as  
34 amended by rule by the council.

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

38 (6)(a) Except as provided in (b) of this subsection, the  
39 Washington state energy code for residential structures shall preempt

1 the residential energy code of each city, town, and county in the  
2 state of Washington.

3 (b) The state energy code for residential structures does not  
4 preempt a city, town, or county's energy code for residential  
5 structures which exceeds the requirements of the state energy code  
6 and which was adopted by the city, town, or county prior to March 1,  
7 1990. Such cities, towns, or counties may not subsequently amend  
8 their energy code for residential structures to exceed the  
9 requirements adopted prior to March 1, 1990.

10 (7) The state building code council shall consult with the  
11 department of enterprise services as provided in RCW 34.05.310 prior  
12 to publication of proposed rules. The director of the department of  
13 enterprise services shall recommend to the state building code  
14 council any changes necessary to conform the proposed rules to the  
15 requirements of this section.

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

19 (9) The definitions in RCW 19.27A.140 apply throughout this  
20 section.

21 **Sec. 8.** RCW 34.05.328 and 2011 c 298 s 21 and 2011 c 149 s 1 are  
22 each reenacted and amended to read as follows:

23 (1) Before adopting a rule described in subsection (5) of this  
24 section, an agency must:

25 (a) Clearly state in detail the general goals and specific  
26 objectives of the statute that the rule implements;

27 (b) Determine that the rule is needed to achieve the general  
28 goals and specific objectives stated under (a) of this subsection,  
29 and analyze alternatives to rule making and the consequences of not  
30 adopting the rule;

31 (c) Provide notification in the notice of proposed rule making  
32 under RCW 34.05.320 that a preliminary cost-benefit analysis is  
33 available. The preliminary cost-benefit analysis must fulfill the  
34 requirements of the cost-benefit analysis under (d) of this  
35 subsection. If the agency files a supplemental notice under RCW  
36 34.05.340, the supplemental notice must include notification that a  
37 revised preliminary cost-benefit analysis is available. A final cost-  
38 benefit analysis must be available when the rule is adopted under RCW  
39 34.05.360;



1 (d) Determine that the probable benefits of the rule are greater  
2 than its probable costs, taking into account both the qualitative and  
3 quantitative benefits and costs and the specific directives of the  
4 statute being implemented;

5 (e) Determine, after considering alternative versions of the rule  
6 and the analysis required under (b), (c), and (d) of this subsection,  
7 that the rule being adopted is the least burdensome alternative for  
8 those required to comply with it that will achieve the general goals  
9 and specific objectives stated under (a) of this subsection;

10 (f) Determine that the rule does not require those to whom it  
11 applies to take an action that violates requirements of another  
12 federal or state law;

13 (g) Determine that the rule does not impose more stringent  
14 performance requirements on private entities than on public entities  
15 unless required to do so by federal or state law;

16 (h) Determine if the rule differs from any federal regulation or  
17 statute applicable to the same activity or subject matter and, if so,  
18 determine that the difference is justified by the following:

19 (i) A state statute that explicitly allows the agency to differ  
20 from federal standards; or

21 (ii) Substantial evidence that the difference is necessary to  
22 achieve the general goals and specific objectives stated under (a) of  
23 this subsection; and

24 (i) Coordinate the rule, to the maximum extent practicable, with  
25 other federal, state, and local laws applicable to the same activity  
26 or subject matter.

27 (2) In making its determinations pursuant to subsection (1)(b)  
28 through (h) of this section, the agency must place in the rule-making  
29 file documentation of sufficient quantity and quality so as to  
30 persuade a reasonable person that the determinations are justified.

31 (3) Before adopting rules described in subsection (5) of this  
32 section, an agency must place in the rule-making file a rule  
33 implementation plan for rules filed under each adopting order. The  
34 plan must describe how the agency intends to:

35 (a) Implement and enforce the rule, including a description of  
36 the resources the agency intends to use;

37 (b) Inform and educate affected persons about the rule;

38 (c) Promote and assist voluntary compliance; and

39 (d) Evaluate whether the rule achieves the purpose for which it  
40 was adopted, including, to the maximum extent practicable, the use of

1 interim milestones to assess progress and the use of objectively  
2 measurable outcomes.

3 (4) After adopting a rule described in subsection (5) of this  
4 section regulating the same activity or subject matter as another  
5 provision of federal or state law, an agency must do all of the  
6 following:

7 (a) Coordinate implementation and enforcement of the rule with  
8 the other federal and state entities regulating the same activity or  
9 subject matter by making every effort to do one or more of the  
10 following:

11 (i) Deferring to the other entity;

12 (ii) Designating a lead agency; or

13 (iii) Entering into an agreement with the other entities  
14 specifying how the agency and entities will coordinate implementation  
15 and enforcement.

16 If the agency is unable to comply with this subsection (4)(a),  
17 the agency must report to the legislature pursuant to (b) of this  
18 subsection;

19 (b) Report to the joint administrative rules review committee:

20 (i) The existence of any overlap or duplication of other federal  
21 or state laws, any differences from federal law, and any known  
22 overlap, duplication, or conflict with local laws; and

23 (ii) Make recommendations for any legislation that may be  
24 necessary to eliminate or mitigate any adverse effects of such  
25 overlap, duplication, or difference.

26 (5)(a) Except as provided in (b) of this subsection, this section  
27 applies to:

28 (i) Significant legislative rules of the departments of ecology,  
29 labor and industries, health, revenue, social and health services,  
30 and natural resources, the employment security department, the forest  
31 practices board, the office of the insurance commissioner, the state  
32 building code council, and to the legislative rules of the department  
33 of fish and wildlife implementing chapter 77.55 RCW; and

34 (ii) Any rule of any agency, if this section is voluntarily made  
35 applicable to the rule by the agency, or is made applicable to the  
36 rule by a majority vote of the joint administrative rules review  
37 committee within forty-five days of receiving the notice of proposed  
38 rule making under RCW 34.05.320.

39 (b) This section does not apply to:

40 (i) Emergency rules adopted under RCW 34.05.350;

1 (ii) Rules relating only to internal governmental operations that  
2 are not subject to violation by a nongovernment party;

3 (iii) Rules adopting or incorporating by reference without  
4 material change federal statutes or regulations, Washington state  
5 statutes, rules of other Washington state agencies, shoreline master  
6 programs other than those programs governing shorelines of statewide  
7 significance, or, as referenced by Washington state law, national  
8 consensus codes that generally establish industry standards, if the  
9 material adopted or incorporated regulates the same subject matter  
10 and conduct as the adopting or incorporating rule;

11 (iv) Rules that only correct typographical errors, make address  
12 or name changes, or clarify language of a rule without changing its  
13 effect;

14 (v) Rules the content of which is explicitly and specifically  
15 dictated by statute;

16 (vi) Rules that set or adjust fees under the authority of RCW  
17 19.02.075 or that set or adjust fees or rates pursuant to legislative  
18 standards, including fees set or adjusted under the authority of RCW  
19 19.80.045;

20 (vii) Rules of the department of social and health services  
21 relating only to client medical or financial eligibility and rules  
22 concerning liability for care of dependents; or

23 (viii) Rules of the department of revenue that adopt a uniform  
24 expiration date for reseller permits as authorized in RCW 82.32.780  
25 and 82.32.783.

26 (c) For purposes of this subsection:

27 (i) A "procedural rule" is a rule that adopts, amends, or repeals  
28 (A) any procedure, practice, or requirement relating to any agency  
29 hearings; (B) any filing or related process requirement for making  
30 application to an agency for a license or permit; or (C) any policy  
31 statement pertaining to the consistent internal operations of an  
32 agency.

33 (ii) An "interpretive rule" is a rule, the violation of which  
34 does not subject a person to a penalty or sanction, that sets forth  
35 the agency's interpretation of statutory provisions it administers.

36 (iii) A "significant legislative rule" is a rule other than a  
37 procedural or interpretive rule that (A) adopts substantive  
38 provisions of law pursuant to delegated legislative authority, the  
39 violation of which subjects a violator of such rule to a penalty or  
40 sanction; (B) establishes, alters, or revokes any qualification or

1 standard for the issuance, suspension, or revocation of a license or  
2 permit; or (C) adopts a new, or makes significant amendments to, a  
3 policy or regulatory program.

4 (d) In the notice of proposed rule making under RCW 34.05.320, an  
5 agency must state whether this section applies to the proposed rule  
6 pursuant to (a)(i) of this subsection, or if the agency will apply  
7 this section voluntarily.

8 (6) By January 31, 1996, and by January 31st of each even-  
9 numbered year thereafter, the office of regulatory assistance, after  
10 consulting with state agencies, counties, and cities, and business,  
11 labor, and environmental organizations, must report to the governor  
12 and the legislature regarding the effects of this section on the  
13 regulatory system in this state. The report must document:

14 (a) The rules proposed to which this section applied and to the  
15 extent possible, how compliance with this section affected the  
16 substance of the rule, if any, that the agency ultimately adopted;

17 (b) The costs incurred by state agencies in complying with this  
18 section;

19 (c) Any legal action maintained based upon the alleged failure of  
20 any agency to comply with this section, the costs to the state of  
21 such action, and the result;

22 (d) The extent to which this section has adversely affected the  
23 capacity of agencies to fulfill their legislatively prescribed  
24 mission;

25 (e) The extent to which this section has improved the  
26 acceptability of state rules to those regulated; and

27 (f) Any other information considered by the office of financial  
28 management to be useful in evaluating the effect of this section.

29 **Sec. 9.** RCW 18.08.240 and 1991 sp.s. c 13 s 2 are each amended  
30 to read as follows:

31 There is established in the state treasury the architects'  
32 license account, into which all fees paid pursuant to this chapter  
33 shall be paid, except as provided in section 10 of this act.

34 NEW SECTION. **Sec. 10.** A new section is added to chapter 18.08  
35 RCW to read as follows:

36 (1) There is imposed a fee of six dollars and fifty cents on each  
37 certificate of registration, renewal of a certificate of  
38 registration, certificate of authorization, and renewal of a

1 certificate of authorization, issued by the director. The director  
2 must collect this fee and must quarterly remit moneys collected under  
3 this subsection to the state treasury.

4 (2) The fee established by subsection (1) of this section is in  
5 addition to other fees authorized by this chapter and prescribed by  
6 the director under RCW 43.24.086.

7 (3) All moneys collected under subsection (1) of this section  
8 must be deposited into the building code council account in the state  
9 treasury.

--- END ---