
SENATE BILL 5412

State of Washington 65th Legislature 2017 Regular Session

By Senators Takko, Zeiger, Warnick, and Miloscia

Read first time 01/24/17. Referred to Committee on Local Government.

1 AN ACT Relating to the state building code council; amending RCW
2 19.27.035, 19.27.060, 19.27.070, 19.27.074, and 19.27A.020;
3 reenacting and amending RCW 34.05.328; adding a new section to
4 chapter 19.27 RCW; creating a new section; and providing an
5 expiration date.

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

7 **Sec. 1.** RCW 19.27.035 and 1989 c 266 s 6 are each amended to
8 read as follows:

9 The building code council shall(~~(, within one year of July 23,~~
10 ~~1989,))~~ adopt a revised process for the review of proposed statewide
11 amendments to the codes enumerated in RCW 19.27.031 by July 1, 2018,
12 and proposed or enacted local amendments to the codes enumerated in
13 RCW 19.27.031 as amended and adopted by the state building code
14 council.

15 **Sec. 2.** RCW 19.27.060 and 2015 c 226 s 1 are each amended to
16 read as follows:

17 (1) The governing bodies of counties and cities may amend the
18 codes enumerated in RCW 19.27.031 as amended and adopted by the state
19 building code council as they apply within their respective
20 jurisdictions, but the amendments shall not result in a code that is

1 less than the minimum performance standards and objectives contained
2 in the state building code.

3 (a) No amendment to a code enumerated in RCW 19.27.031 as amended
4 and adopted by the state building code council that affects single-
5 family or multifamily residential buildings shall be effective unless
6 the amendment is approved by the building code council under RCW
7 19.27.074(1)(b).

8 (b) Any county or city amendment to a code enumerated in RCW
9 19.27.031 which is approved under RCW 19.27.074(1)(b) shall continue
10 to be effective after any action is taken under RCW 19.27.074(1)(a)
11 without necessity of reapproval under RCW 19.27.074(1)(b) unless the
12 amendment is declared null and void by the council at the time any
13 action is taken under RCW 19.27.074(1)(a) because such action in any
14 way altered the impact of the amendment.

15 (2) Except as permitted or provided otherwise under this section,
16 the state building code shall be applicable to all buildings and
17 structures including those owned by the state or by any governmental
18 subdivision or unit of local government.

19 (3) The governing body of each county or city may limit the
20 application of any portion of the state building code to exclude
21 specified classes or types of buildings or structures according to
22 use other than single-family or multifamily residential buildings.
23 However, in no event shall fruits or vegetables of the tree or vine
24 stored in buildings or warehouses constitute combustible stock for
25 the purposes of application of the uniform fire code. A governing
26 body of a county or city may inspect facilities used for temporary
27 storage and processing of agricultural commodities.

28 (4) No provision of the uniform fire code concerning roadways
29 shall be part of the state building code: PROVIDED, That this
30 subsection shall not limit the authority of a county or city to adopt
31 street, road, or access standards.

32 (5) The provisions of the state building code may be preempted by
33 any city or county to the extent that the code provisions relating to
34 the installation or use of sprinklers in jail cells conflict with the
35 secure and humane operation of jails.

36 (6)(a) Effective one year after July 23, 1989, the governing
37 bodies of counties and cities may adopt an ordinance or resolution to
38 exempt from permit requirements certain construction or alteration of
39 either group R, division 3, or group M, division 1 occupancies, or
40 both, as defined in the uniform building code, 1988 edition, for

1 which the total cost of fair market value of the construction or
2 alteration does not exceed fifteen hundred dollars. The permit
3 exemption shall not otherwise exempt the construction or alteration
4 from the substantive standards of the codes enumerated in RCW
5 19.27.031, as amended and maintained by the state building code
6 council under RCW 19.27.070.

7 (b) Prior to July 23, 1989, the state building code council shall
8 adopt by rule, guidelines exempting from permit requirements certain
9 construction and alteration activities under (a) of this subsection.

10 (7) To foster innovation in accordance with RCW 19.27.020(3), the
11 state building code council shall create a procedure for the approval
12 of any material, product, equipment, method of construction, design,
13 or system that has been certified pursuant to the international
14 organization for standardization/international electrotechnical
15 commission standard number 17065.

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

18 There is hereby established in the department of enterprise
19 services a state building code council, to be appointed by the
20 governor.

21 (1) The state building code council shall consist of fifteen
22 members:

23 (a) Two members must be county elected legislative body members
24 or elected executives;

25 (b) Two members must be city elected legislative body members or
26 mayors;

27 (c) One member must be a local government building code
28 enforcement official;

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

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

32 (f) One member must represent the general public; and

33 (g) Seven members must represent the private sector as follows:

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

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

38 ~~((g))~~ (iii) One member shall represent the architectural design
39 profession;

1 ~~((h))~~ (iv) One member shall represent the structural
2 engineering profession;

3 ~~((i))~~ (v) One member shall represent the mechanical engineering
4 profession;

5 ~~((j))~~ (vi) One member shall represent the construction building
6 trades;

7 ~~((k))~~ (vii) One member shall represent manufacturers,
8 installers, or suppliers of building materials and components(~~(÷~~

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

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

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

14 (3) The council shall include: Two members of the house of
15 representatives appointed by the speaker of the house, one from each
16 caucus; two members of the senate appointed by the president of the
17 senate, one from each caucus; and an employee of the electrical
18 division of the department of labor and industries, as ex officio,
19 nonvoting members with all other privileges and rights of membership.

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

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

24 (c) Any member who is appointed by virtue of being an elected
25 official or holding public employment shall be removed from the
26 council if he or she ceases being such an elected official or holding
27 such public employment.

28 (d)(i) Any member who is appointed to represent a specific
29 private sector industry must maintain sufficiently similar employment
30 or circumstances throughout the term of office to remain qualified to
31 represent the specified industry. Retirement or unemployment is not
32 cause for termination. However, if a councilmember enters into
33 employment outside of the industry he or she has been appointed to
34 represent, then he or she shall be removed from the council.

35 (ii) Any member who is appointed after the effective date of this
36 section to represent a specific private sector industry must maintain
37 sufficiently similar private sector employment or circumstances
38 throughout the term of office to remain qualified to represent the
39 specified industry. Retirement or unemployment is not cause for
40 termination. However, if a councilmember appointed after the

1 effective date of this section to represent a specific private sector
2 industry enters into employment outside of the industry, or outside
3 of the private sector, he or she has been appointed to represent,
4 then he or she shall be removed from the council.

5 (e) Any member who no longer qualifies for appointment under this
6 section may not vote on council actions, but may participate as an ex
7 officio, nonvoting member until a replacement member is appointed. A
8 member must notify the council staff and the governor's office within
9 thirty days of the date the member no longer qualifies for
10 appointment under this section. The governor shall appoint a
11 qualified replacement for the member within sixty days of notice.

12 (5) Before making any appointments to the building code council,
13 the governor shall seek nominations from recognized organizations
14 which represent the entities or interests identified in this section.

15 (6) Members shall not be compensated but shall receive
16 reimbursement for travel expenses in accordance with RCW 43.03.050
17 and 43.03.060.

18 ~~((7) The department of enterprise services shall provide~~
19 ~~administrative and clerical assistance to the building code~~
20 ~~council.))~~

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

23 (1) The state building code council shall:

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

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

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

35 (d) Propose a budget for the operation of the state building code
36 council to be submitted to the office of financial management
37 pursuant to RCW 43.88.090.

38 (2) The state building code council may:

1 (a) Appoint technical advisory committees which may include
2 members of the council; and

3 ~~((Employ permanent and temporary staff and contract for
4 services; and~~

5 ~~(e))~~ Conduct research into matters relating to any code or codes
6 referred to in RCW 19.27.031 or any related matter.

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

12 (b) All council decisions relating to the codes enumerated in RCW
13 19.27.031 shall require approval by at least a majority of the
14 members of the council.

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

19 (4) The department of enterprise services shall employ permanent
20 and temporary staff and contract for services for the state building
21 code council.

22 NEW SECTION. Sec. 5. The building code council in consultation
23 with the office of the chief information officer shall assess the
24 costs and benefits of the potential acquisition and implementation of
25 open public access information technologies to enhance the council's
26 code adoption process and report back to the appropriate committees
27 of the legislature by November 15, 2018.

28 NEW SECTION. Sec. 6. A new section is added to chapter 19.27
29 RCW to read as follows:

30 (1)(a) A legislative task force on the state building code
31 council's administration and operations is established, with members
32 as provided in this subsection.

33 (i) The president of the senate shall appoint one member from
34 each of the two largest caucuses of the senate.

35 (ii) The speaker of the house of representatives shall appoint
36 one member from each of the two largest caucuses of the house of
37 representatives.

1 (iii) The president of the senate and the speaker of the house of
2 representatives shall appoint the following eight members:

3 (A) Two current members of the building code council representing
4 the private sector;

5 (B) One current member of the building code council representing
6 local government;

7 (C) One current member of the building code council representing
8 labor interests; and

9 (D) Four members who regularly work with the council, each
10 representing one of the following: Local government, private sector
11 interests, labor interests, and environmental interests.

12 (iv) The director of the department of enterprise services shall
13 appoint one member from the department of enterprise services and one
14 member from the department of commerce energy program.

15 (b) The task force shall choose its chair from among its
16 legislative membership. The legislative members of the task force
17 shall convene the initial meeting of the task force.

18 (2) The task force shall review and provide recommendations on
19 the following issues:

20 (a) The current structure, operations, and resources of the
21 council;

22 (b) The building code development process and length, including
23 the policy and procedure, technical, and economic aspects including
24 the public and private construction costs of review and adoption of
25 the state building code;

26 (c) Total resources necessary for an effective state building
27 code development process, including staffing and needs;

28 (d) Options for long-term, reliable funding of the council;

29 (e) The powers, duties, and support services of the department of
30 enterprise services relevant to the council;

31 (f) Council membership, composition, and size; and

32 (g) The council's compliance with current statutes and
33 requirements.

34 (3) Staff support for the task force must be provided by senate
35 committee services and the office of program research.

36 (4) Legislative members of the task force are reimbursed for
37 travel expenses in accordance with RCW 44.04.120. Nonlegislative
38 members are not entitled to be reimbursed for travel expenses if they
39 are elected officials or are participating on behalf of an employer,

1 governmental entity, or other organization. Any reimbursement for
2 other nonlegislative members is subject to chapter 43.03 RCW.

3 (5) The expenses of the task force must be paid jointly by the
4 senate and the house of representatives. Task force expenditures are
5 subject to approval by the senate facilities and operations committee
6 and the house of representatives executive rules committee, or their
7 successor committees.

8 (6) The task force shall report its findings and recommendations
9 to the appropriate committees of the legislature by October 1, 2018.

10 (7) This section expires October 1, 2018.

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

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

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

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

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

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

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

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

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

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

11 (b)(i) The state energy code for residential structures does not
12 preempt a city, town, or county's energy code for residential
13 structures which exceeds the requirements of the state energy code
14 and which was adopted by the city, town, or county prior to March 1,
15 1990. Such cities, towns, or counties may not subsequently amend
16 their energy code for residential structures to exceed the
17 requirements adopted prior to March 1, 1990.

18 (ii) The state building code council shall create a procedure for
19 the approval of any material, product, equipment, method of
20 construction, design, or system that has been certified pursuant to
21 the international organization for standardization/international
22 electrotechnical commission standard number 17065.

23 (7) The state building code council shall consult with the
24 department of enterprise services as provided in RCW 34.05.310 prior
25 to publication of proposed rules. The director of the department of
26 enterprise services shall recommend to the state building code
27 council any changes necessary to conform the proposed rules to the
28 requirements of this section.

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

32 (9) The definitions in RCW 19.27A.140 apply throughout this
33 section.

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

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

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

1 (b) Determine that the rule is needed to achieve the general
2 goals and specific objectives stated under (a) of this subsection,
3 and analyze alternatives to rule making and the consequences of not
4 adopting the rule;

5 (c) Provide notification in the notice of proposed rule making
6 under RCW 34.05.320 that a preliminary cost-benefit analysis is
7 available. The preliminary cost-benefit analysis must fulfill the
8 requirements of the cost-benefit analysis under (d) of this
9 subsection. If the agency files a supplemental notice under RCW
10 34.05.340, the supplemental notice must include notification that a
11 revised preliminary cost-benefit analysis is available. A final cost-
12 benefit analysis must be available when the rule is adopted under RCW
13 34.05.360;

14 (d) Determine that the probable benefits of the rule are greater
15 than its probable costs, taking into account both the qualitative and
16 quantitative benefits and costs and the specific directives of the
17 statute being implemented;

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

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

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

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

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

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

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

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

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

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

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

12 (c) Promote and assist voluntary compliance; and

13 (d) Evaluate whether the rule achieves the purpose for which it
14 was adopted, including, to the maximum extent practicable, the use of
15 interim milestones to assess progress and the use of objectively
16 measurable outcomes.

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

21 (a) Coordinate implementation and enforcement of the rule with
22 the other federal and state entities regulating the same activity or
23 subject matter by making every effort to do one or more of the
24 following:

25 (i) Deferring to the other entity;

26 (ii) Designating a lead agency; or

27 (iii) Entering into an agreement with the other entities
28 specifying how the agency and entities will coordinate implementation
29 and enforcement.

30 If the agency is unable to comply with this subsection (4)(a),
31 the agency must report to the legislature pursuant to (b) of this
32 subsection;

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

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

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

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

3 (i) Significant legislative rules of the departments of ecology,
4 labor and industries, health, revenue, social and health services,
5 and natural resources, the employment security department, the forest
6 practices board, the office of the insurance commissioner, the state
7 building code council, and to the legislative rules of the department
8 of fish and wildlife implementing chapter 77.55 RCW; and

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

14 (b) This section does not apply to:

15 (i) Emergency rules adopted under RCW 34.05.350;

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

18 (iii) Rules adopting or incorporating by reference without
19 material change federal statutes or regulations, Washington state
20 statutes, rules of other Washington state agencies, shoreline master
21 programs other than those programs governing shorelines of statewide
22 significance, or, as referenced by Washington state law, national
23 consensus codes that generally establish industry standards, if the
24 material adopted or incorporated regulates the same subject matter
25 and conduct as the adopting or incorporating rule;

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

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

31 (vi) Rules that set or adjust fees under the authority of RCW
32 19.02.075 or that set or adjust fees or rates pursuant to legislative
33 standards, including fees set or adjusted under the authority of RCW
34 19.80.045;

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

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

1 (c) For purposes of this subsection:

2 (i) A "procedural rule" is a rule that adopts, amends, or repeals
3 (A) any procedure, practice, or requirement relating to any agency
4 hearings; (B) any filing or related process requirement for making
5 application to an agency for a license or permit; or (C) any policy
6 statement pertaining to the consistent internal operations of an
7 agency.

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

11 (iii) A "significant legislative rule" is a rule other than a
12 procedural or interpretive rule that (A) adopts substantive
13 provisions of law pursuant to delegated legislative authority, the
14 violation of which subjects a violator of such rule to a penalty or
15 sanction; (B) establishes, alters, or revokes any qualification or
16 standard for the issuance, suspension, or revocation of a license or
17 permit; or (C) adopts a new, or makes significant amendments to, a
18 policy or regulatory program.

19 (iv) "National consensus codes that generally establish industry
20 standards" include, but are not limited to, the building codes
21 published by the International Code Council, Inc. as cited in RCW
22 19.27.031 and 19.27.020. However, the exemption only applies to
23 building codes published by the International Code Council, Inc. if
24 the state building code council does not make any modifications to
25 the published code.

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

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

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

39 (b) The costs incurred by state agencies in complying with this
40 section;

1 (c) Any legal action maintained based upon the alleged failure of
2 any agency to comply with this section, the costs to the state of
3 such action, and the result;
4 (d) The extent to which this section has adversely affected the
5 capacity of agencies to fulfill their legislatively prescribed
6 mission;
7 (e) The extent to which this section has improved the
8 acceptability of state rules to those regulated; and
9 (f) Any other information considered by the office of financial
10 management to be useful in evaluating the effect of this section.

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