

HOUSE BILL REPORT

HB 1622

As Reported by House Committee On:
Local Government
Appropriations

Title: An act relating to the state building code council.

Brief Description: Concerning the state building code council.

Sponsors: Representatives Senn, Springer, Tharinger, Ormsby and Fey.

Brief History:

Committee Activity:

Local Government: 2/7/17, 2/15/17 [DPS];

Appropriations: 2/23/17, 2/24/17, 1/17/18, 1/18/18 [DP2S(w/o sub LG)].

Brief Summary of Second Substitute Bill

- Modifies the administrative processes of the State Building Code Council (Council), including requiring the Council to adhere to statutory requirements applicable to significant legislative rules.
- Establishes the Council in the Department of Enterprise Services (DES) and specifies that the DES provides administrative support and the Council has rulemaking authority.
- Creates separate building permit fees for commercial building permits and residential building permits.
- Creates a new fee for licensing of registered architects and entities engaged in the practice of architecture.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Appleton, Chair; McBride, Vice Chair; Gregerson and Peterson.

Minority Report: Do not pass. Signed by 3 members: Representatives Griffey, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Taylor.

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.

Staff: Desiree Omli (786-7383).

Background:

The State Building Code Council.

The State Building Code Council (Council) is responsible for adopting, maintaining, and amending the State Building Code (Building Code) and establishes statewide minimum performance standards and requirements for construction and construction materials, consistent with accepted standards of engineering, fire, and life safety.

The Council is made up of 15 members appointed by the Governor who represent specified entities as follows:

- two members from the county legislative body or elected executives;
- two members from the city legislative body or mayors;
- one member who is the local government building code enforcement official;
- one member who is a local government fire service official;
- one member who is a person with a physical disability who must represent the disability community;
- one member from the general public; and
- seven members from various areas of specialty such as general construction, architectural design, structural engineering, mechanical engineering, construction building trades, and manufacturing or supplying of building materials.

A member who is appointed to represent a specific private sector industry must maintain sufficiently similar employment or circumstances throughout their term on the Council. Employment outside of the specific industry is grounds for termination from the Council.

The Council may employ permanent and temporary staff and contract for services. The Department of Enterprise Services (DES) provides administrative and clerical assistance to the Council.

The State Building Code.

The Building Code is comprised of model codes published by the International Code Council, including building, residential, and fire codes, adopted by reference in statute, as well as rules developed and adopted by the Council. The model codes typically set forth the industry standard. The Council adopted a process for the review of proposed statewide amendments to the model codes and proposed local amendments to the model codes.

Significant Legislative Rules.

An agency is required to make specified determinations and perform additional analysis during the rulemaking process when adopting any significant legislative rule. A "significant legislative rule" is a rule other than a procedural or interpretive rule that:

- adopts substantive provisions of law pursuant to the delegated legislative authority, the violation of which is punishable by 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, or makes significant amendments to, a policy or regulatory program.

An agency is not required to comply with the process for adopting significant legislative rules if the rule is adopting or incorporating by reference, without material change, federal statutes or regulations, state statutes, rules of other state agencies, Shoreline Master Programs, or national consensus codes that generally establish industry standards.

Building Code Permits and Vested Rights.

The vested rights doctrine was developed by courts under common law. An application to use property vests to the laws in effect upon submission of a sufficiently complete application for the requested property use. The Legislature codified the vested rights doctrine as it pertains to land use, property development, and construction permitting. Under the State Building Code Act, a valid and fully complete building permit application for a structure that is permitted under the zoning or other land use control ordinance in effect on the date of the application vests to the building permit ordinance and the zoning or other land use control ordinances in effect on the date of the application.

A fee of \$5.50 must be paid for each building permit issued by the county or city, plus an additional \$2 surcharge for each residential unit, except the first unit, in a building with more than one unit.

Summary of Substitute Bill:

State Building Code Council.

The Council is established in the DES. Rulemaking authority is housed within the Council. The DES, with advice and input from the Council, must hire staff, contract for services for the Council, and provide all administrative and information technology services required for the Council. In addition, the Council must approve the proposed budget submitted by the DES, and may approve contracts for services entered into by the DES.

The seven members of the Council representing various areas of specialized fields must represent the private sector or professional organizations. "Professional organizations" is defined as an entity whose members are engaged in a particular lawful vocation, occupation, or field of activity of a specialized nature, including associations, boards, educational institutions, and nonprofit organizations. Employment outside of the private sector is grounds for termination from the Council.

By July 1, 2018, the Council must adopt a revised process for review of proposed statewide amendments to the Building Codes as enumerated in statute and proposed or enacted local amendments to those codes.

The State Building Code—Significant Legislative Rules.

The Council is added to the list of agencies required to adhere to additional statutory requirements for significant legislative rules.

Building Code Permits and Vested Rights.

An applicant for a building permit must pay a fee of \$5.50 for each residential building permit, and \$10 for each commercial building permit. A "residential building permit" is a

building permit issued by a city or a county to construct, enlarge, alter, repair, move, demolish, or change the occupancy of any building containing only dwelling units used for independent living of one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, and structures accessory to dwelling units such as detached garages and storage buildings. A "commercial building permit" is a building permit issued by a city or a county to construct, enlarge, alter, repair, move, demolish, or change the occupancy of any building not covered by a residential building permit.

Architectural and engineering designs in building permit applications vest with the codes and ordinances in effect on the date of the application. This applies through completion of construction.

Open Public Access Information Technology–Report.

The Council, in consultation with the Office of the Chief Information Officer, must assess the costs and benefits of the potential acquisition and implementation of open public access information technologies to enhance the Council's code adoption process. The Council must report to the Legislature by November 15, 2018.

Task Force.

A task force is established and made up of 12 members as follows:

- one member from each of the two largest caucuses of the Senate, appointed by the President of the Senate;
- one member from each of the two largest caucuses of the House of Representatives (House), appointed by the Speaker of the House;
- eight members representing various interests, appointed by the Speaker of the House and the President of the Senate;
- one member from the DES and one member from the Department of Commerce Energy program, appointed by the Director of the DES.

The Office of Program Research and Senate Committee Services must provide staff support. By December 1, 2018, the taskforce must report and provide recommendations on:

- the current structure, operations, and resources of the Council;
- the building code development process;
- total resources necessary for an effective Building Code development process;
- operations for long-term, reliable funding of the Council;
- the powers, duties, and support services of the DES;
- Council membership, composition, and size; and
- the Council's compliance with current statutes and requirements.

Substitute Bill Compared to Original Bill:

The substitute bill adds that rulemaking authority is housed with the Council, and the DES provides administrative and information technology support, such as hiring staff and contracting for services. In addition, the DES, rather than the Council, proposes a budget for the operation of the Council and submits it to the Office of Financial Management, and enters into contracts for services. The Council must approve the proposed budget and may contract for services.

The seven members of the Council from certain specialized areas must represent the private sector, or a professional organization. A "professional organization" is defined as an entity whose members are engaged in a particular lawful vocation, occupation, or field of activity of a specialized nature, including associations, boards, educational institutions, and nonprofit organizations.

In addition, structures accessory to dwelling units, such as detached garages and storage buildings are added as types of buildings that would qualify under a residential building permit.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This substitute bill incorporates comments and questions from the Senate hearing and adds clarifications around rulemaking, which was an important piece of feedback. It clarifies the DES's role and clarifies that the Council has ultimate rulemaking authority. This bill also adopts reforms to ensure the Council is responsible and supported. Incorporating them within the DES gives the Council administrative support that they have been lacking. The fee increase is modest, and fees have not been increased since 1999. The fee increase will give the Council the resources necessary to make improvements in the operation of the Council and do the work that the Legislature is asking them to do. It is important to ensure that there is a strong Council as we are dealing with earthquakes and making sure our schools are earthquake proof. The Council is also critical in ensuring our marijuana industry is operating safely. We need the Council to be strong and supported to keep our facilities safe and sound.

(Opposed) There is concern regarding the fee increase; not with the dollar amount of the fee, but rather how the Council has been conducting its affairs. The Council needs to function better. Clarifying membership in the Council, placing the Council in the DES, and clarifying who has rulemaking authority are good. However, the Legislature did not authorize fees last year as a message, and the Council was able to secure funding from three different agencies. Therefore, there is a concern with the management style of the Council. The task force created in the bill is meant to look at what the Council's budgeting needs are, and how many staff and what type of staff are needed. It should be left to the task force to decide budget needs, rather than implement a fee increase. There are ways to move the Council forward without raising the fees at this time. Moreover, this bill does not include provisions to allow innovative technologies to be evaluated and vetted by more comprehensive code standards at the national level.

Persons Testifying: (In support) Representative Senn, prime sponsor; Amy Brackenbury and Tom Phillips, Washington Association of Building Officials; Tim Herbert, Washington State Association of Plumbers & Pipe Fitters, and HVAC Mechanics; Kraig Stevenson, International Code Council; Ann Larson, Department of Enterprise Services; Gerald Scheuermann, International Association of Plumbing and Mechanical Officials; and Bruce Chattin, Washington Aggregates & Concrete Association.

(Opposed) Steve Gano, Business Industry Association of Washington; and Jeanette McKague, Washington Realtors.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Local Government. Signed by 17 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 14 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Condotta, Graves, Haler, Manweller, Schmick, Taylor, Vick, Volz and Wilcox.

Minority Report: Without recommendation. Signed by 1 member: Representative Harris.

Staff: Meghan Morris (786-7119).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Local Government:

The second substitute bill makes the following changes:

- requires that a member appointed to the State Building Code Council (Council) to represent the general public may not be eligible for membership on the Council in any other capacity and may not have previously been nominated or appointed to represent any other group;
- requires the Governor to select appointees to represent private sector industries from a list of three nominations provided by the largest trade associations representing the industry, unless no names are provided;
- requires the Department of Enterprise Services to contract with an independent, third party entity to perform a Washington energy code baseline economic analysis and economic analysis of code proposals;
- increases the fee imposed on each residential building permit from \$5.50 to \$6.50;
- increases the fee imposed on each commercial building permit from \$10 to \$25;
- removes a provision requiring architectural and engineering designs in building permit applications and through construction to be controlled by the codes and ordinances in effect on the date of application;

- removes a section creating a legislative task force on the Council's administration and operations, requiring a review of specific issues and a report to the Legislature;
- creates a fee of \$6.50 on each certificate of registration and renewal of a certificate of registration for a registered architect and each certificate of authorization and renewal of a certificate of authorization for an entity engaged in the practice of architecture; and
- requires that the fee for licensing of registered architects and entities engaged in the practice of architecture to be collected by the Director of the Department of Licensing for deposit into the Building Code Council Account.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The Building Code Council (Council) serves an important function, but needs both reform and account solvency. There is a history of complaints and frustrations about the Council's function and unmet goals. In response, multiple stakeholders have reached a balance between new reform and fee increases. The key reform is requiring economic analysis on proposed codes. The Council plays an important role for our state to ensure strong, well-reasoned, and earthquake-sound codes. With the current housing and school construction boom, this is the time to make sure good building codes are in place. Additionally, the Council was critical last year in allowing the marijuana industry to function and generate state revenue. Furthermore, energy efficiency is one of most cost-effective forms of energy we can acquire. Building energy codes have been the most effective policy in reducing energy use in buildings. The Council handles critical updates to the state's building codes, including plumbing, fire, earthquake safety, as well as other building components. The Council has been tasked by the Legislature to substantially improve the code and increase energy efficiency by 2030. While the Council performs critical and complicated work, funding for the Council has not increased since 1989. The fee increases are a modest step to securing sustainable funding for the Council, as opposed to the need for additional state general funds. Thousands of volunteer hours help to develop the codes, but more resources are necessary for the Council to be productive to ensure predictable and reliable codes.

(Opposed) None.

(Other) It has taken three or four years to agree on substantive reforms with appropriate fee increases to manage the Council's workload. The fees should be used to focus solely on the core activities of the Council. Unfortunately, the Council adopted a rule change that focuses on activities outside the Council's core activities. They should return the focus of this bill's budget component to the Council's core activities.

The Council spent the last two years addressing stakeholder concerns to refine the process, yet there are changes in section 2 that have not gone through that process. There are also some concerns with definitional issues on page four. Some of the language regarding trade organizations needs to be clarified for consistency.

Persons Testifying: (In support) Representative Senn, prime sponsor; Amy Brackenbury, Washington Association of Building Officials; Amy Wheelless, Northwest Energy Coalition; Mike Ennis, Association of Washington Business; Doug Orth and Richard Brown, State Building Code Council; and Jerry Vanderwood, Associated General Contractors of Washington.

(Other) Bill Stauffacher, Building Industry Association of Washington; Tim Herbert, Washington Pipe Trades; and Michael Transue, Washington State Conference of Mason Contractors.

Persons Signed In To Testify But Not Testifying: None.