

SENATE BILL REPORT

SB 5500

As of February 23, 2017

Title: An act relating to addressing the accountability, function, and efficiency of the state building code council.

Brief Description: Concerning the state building code council.

Sponsors: Senators Honeyford, Zeiger, Schoesler, Wilson, Angel and Hobbs.

Brief History:

Committee Activity: Local Government: 2/02/17, 2/16/17 [DPS-WM, w/oRec].
Ways & Means: 2/22/17.

Brief Summary of Bill

- Prevents the State Building Code Council (Council) from adopting substantial amendments to the State Building Code and Washington State Energy Code more frequently than every six years.
- Subjects amendments proposed by the Council to legislative review.
- Establishes the Council within the Department of Enterprise Services, which must employ staff for the Council.

SENATE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: That Substitute Senate Bill No. 5500 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Short, Chair; Angel, Vice Chair; Sheldon.

Minority Report: That it be referred without recommendation.

Signed by Senators Takko, Ranking Minority Member; Palumbo.

Staff: Bonnie Kim (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Daniel Masterson (786-7454)

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.

Background: State Building Code. The State Building Code (Code) establishes minimum performance standards and requirements for construction and construction materials in the state, consistent with accepted standards of engineering, fire, and life safety. The Code comprises a number of model codes and standards, developed and published by international and national organizations, which are adopted by reference in the State Building Code Act (Act). Model codes and standards adopted in the Act include the International Building Code, the International Residential Code, and the Uniform Plumbing Code Standards.

The State Building Code Council (Council) is responsible for adopting, amending, and maintaining the model codes and standards adopted by reference in the Act. Amendments to the model codes and standards adopted by the Council are codified in the Washington Administrative Code. The Council reviews updated editions of each model code and standard every three years. 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 Council has 15 members appointed by the Governor. At least 6 of the 15 members must reside in Eastern Washington. Additionally, four legislative members—one member from each caucus in the Senate and House—and an employee of the electrical division of the Department of Labor and Industries serve as ex officio, nonvoting members on the Council.

Each qualified member serves a three-year term. Members who represent a specific private sector industry must maintain sufficiently similar employment or circumstances throughout the term of office to remain qualified. Retirement or unemployment is not a cause for termination from the Council. If a member enters employment outside of the industry they represent, the member must be removed from the Council.

Washington State Energy Code (WSEC). The Council is charged with adopting, amending, and maintaining the WSEC, as part of the Code. The WSEC for residential buildings is the maximum and minimum energy code for residential construction in each county, city, and town. The WSEC for commercial or nonresidential buildings is the minimum energy code for commercial construction. The WSEC is required to take into account regional climatic conditions.

Summary of Bill (First Substitute): Amendments. The Council may not adopt substantial amendments to the Code, including the WSEC, more frequently than every six years after the adoption and implementation of the 2016 codes. The Council, however, may enact emergency statewide amendments if an amendment is needed:

- to address a critical life and safety need;
- to address a specific new or amended state statute;
- for consistency with state or federal regulations; or
- to correct errors or omissions.

The Council must make decisions to amend the Code, including the WSEC, by December 1st. Those decisions do not take effect unless the Legislature passes a bill to allow implementation of code updates to conform with model codes and statutes. Such a bill may not be used as admissible evidence of legislative intent. A provision requiring legislative review of disputed WSEC provisions within an amendment is removed.

The Council may amend the WSEC to increase the energy efficiency of newly constructed residential buildings if the amendments increase the energy efficiency of typical newly constructed residential buildings and any new standards or requirements are technically feasible, commercially available, and cost-effective to consumers.

Vested Rights. Building permits are controlled by codes and ordinances in effect on the date of application.

Council. The Council is established in DES. DES, with the advice and input from the members of the Council, must employ permanent and temporary staff and contract for services for the Council. Rulemaking authority continues to remain with the Council.

Council members appointed after the effective date of the bill to represent a specific private sector industry must maintain sufficiently similar private sector employment throughout their term but may not be terminated if retired or unemployed. If a member enters employment outside of the industry they represent or the private sector, the member must be removed from the Council.

EFFECT OF CHANGES MADE BY LOCAL GOVERNMENT COMMITTEE (First Substitute):

- Clarifies that rulemaking authority remains with the Council.
- Codifies current practice where DES submits proposed budgets to OFM on behalf of the Council.
- Clarifies that DES must enter into contracts on behalf of the Council and the Council retains authority to approve those contracts.
- Clarifies that DES must submit agency request legislation for legislative approval of the Council's decisions.
- Allows emergency amendments without legislative approval.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Local Government): *The committee recommended a different version of the bill than what was heard.* PRO: We have building codes updated every three years now. This is common sense cost-savings legislation. One particularly good provision in this bill is the one that ensures that when a person gets a building permit under the code, the code cannot change under the person and add additional requirements. Updating the codes every three years is a burden. Previous versions of the bill did not trigger an assumption of rulemaking authority in DES. The Council needs reforms in terms of management and operation. The intent of the bill was not for DES to absorb full rulemaking authority.

CON: The six-year code cycle provisions cannot be supported by electrical manufacturers because it is the wrong answer to the question of the Council's rulemaking deficiencies. The Council should follow the Administrative Procedures Act's requirements for significant legislative rulemaking. The Council should be housed in a state agency to provide oversight and human resource management. The Council currently has two people on staff; it is underfunded. The six-year cycle is too long to keep up with advancing technology. Changes to the model codes and state amendments are intended to address safety issues. It is unclear whether the provision requiring legislative approval of Council amendments is an unfunded mandated. The building codes we adopt shape energy use and/or waste. Moving to a six-year cycle will result in inefficient buildings. Pushing updates out may result in more expensive retrofits to buildings.

OTHER: There was a AAG interpretation of Section 5 of the bill that questioned the rulemaking authority of DES. Additional language would be helpful to clarify the rulemaking authority.

Persons Testifying (Local Government): PRO: Senator Jim Honeyford, Prime Sponsor; Mike Ennis, Assn. of WA Business; Jan Himebaugh, Building Industry Assn. of WA.

CON: Charlie Brown, National Electrical Manufacturers Assn.; Kraig Stevenson, International Code Council; Robert Bradley, WA State Assn. of Fire Marshals; Leanne Guier, City of Pacific; Craig Engelking, NW Energy Coalition.

OTHER: Ann Larson, Dept. of Enterprise Services.

Persons Signed In To Testify But Not Testifying (Local Government): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: This should help reduce costs of construction in the capital budget. The fiscal note will be dramatically reduced with the substitute. The code should not be about product placement; it should be about health and safety.

CON: Skipping a round of code revisions would actually increase costs. It would make it more difficult to translate the new code to the six year old code. The requirement for legislative approval of new codes calls into question the purpose of the building code council. The code updates every three years to take into account safety improvements and new technology and are vetted by stakeholders.

Persons Testifying (Ways & Means): PRO: Senator Jim Honeyford, Prime Sponsor; Jan Himebaugh, Building Industry Association of Washington; Mike Ennis, Association of Washington Business.

CON: Charlie Brown, National Electrical Manufacturers Association; Kraig Stevenson, International Code Council; Robert Bradley, WA State Association of Fire Marshals.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.