

HOUSE BILL REPORT

ESSB 6291

As Passed House:

March 1, 2024

Title: An act relating to streamlining the state building code council operating procedures by establishing criteria for statewide amendments to the state building code.

Brief Description: Streamlining the state building code council operating procedures by establishing criteria for statewide amendments to the state building code.

Sponsors: Senate Committee on State Government & Elections (originally sponsored by Senators Wilson, L., Lovick, Dozier and Short).

Brief History:

Committee Activity:

Local Government: 2/16/24, 2/20/24 [DP].

Floor Activity:

Passed House: 3/1/24, 95-0.

Brief Summary of Engrossed Substitute Bill

- Provides that the State Building Code (Code) and State Energy Code (Energy Code) are adopted on a three-year cycle, that substantive amendments to the codes may generally only be made once during this cycle, that off-cycle or emergency amendments may be made under certain circumstances, and for the consideration of such amendments by the State Building Code Council (Council).
- Provides requirements for determining quorums and voting thresholds on the Council, procedures for selecting and removing Council members, and qualifications for technical advisory group membership.
- Provides that the Energy Code is the minimum energy code for renovated, as well as new, nonresidential buildings.

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

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 7 members: Representatives Duerr, Chair; Alvarado, Vice Chair; Goehner, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Berg, Griffey and Riccelli.

Staff: Kellen Wright (786-7134).

Background:

The State Building Code Council (Council) is a state agency responsible for the adoption of the State Building Code (Code). The Code establishes the minimum requirements and standards for buildings constructed in the state. The Code consists of a series of model codes, such as the International Building Code and the International Residential Code, that are adopted by reference, and any amendments that the Council makes to the model codes. The Council is required to regularly review updates to the model codes and amend them as deemed appropriate by the Council. The model codes are updated every three years.

The Council also adopts the State Energy Code (Energy Code). The Energy Code must be designed to require the construction of increasingly energy efficient homes and buildings. The Council must review the Code as it applies to residential buildings every three years. The nonresidential Energy Code may not be amended more frequently than once every three years. The minimum energy code for new nonresidential buildings is the Energy Code.

Decisions related to the Code require approval by a majority of council members. Decisions related to the Energy Code for nonresidential buildings must be approved by a two-thirds majority. If only a majority of members support a decision related to the Energy Code, then the decision must be approved by the Legislature before going into effect. Any decisions made to adopt or amend a code must be made prior to December 1, and cannot go into effect until the end of the legislative session in the following year.

The Council is made up of 15 voting members appointed by the Governor. Seven of the members are representative of certain private sector or professional organizations. These members represent specific industries or professions. For example, one member must represent the architectural design profession, while another must represent the construction building trades. The members from the private sector or professional organizations must be selected by the Governor from a list of three candidates provided by trade associations representing the industry, unless the organizations do not provide any names.

Of the remaining members, six are elected or government officials, one member represents the disability community, and one member represents the general public. Two members of the House of Representatives, two members of the Senate, and an employee of the electrical division of the Department of Labor and Industries serve as ex officio nonvoting members.

Members serve for three years, or as long as they remain qualified. An elected or government official who ceases to be qualified must be removed. A member representing the private sector or a professional organization who takes a job outside of the industry they represent must likewise be removed from the Council. Any member who no longer qualifies for appointment may not vote, but may continue to participate as an ex officio member until the Governor appoints a replacement. A member must notify the Council's staff and the Governor within 30 days of becoming unqualified for appointment. The Governor must name a replacement within 60 days.

The Council may appoint technical advisory groups (TAGs) to analyze issues and make recommendations for code amendments to the Code and Energy Code.

The Council is within the Department of Enterprise Services (Department). The Department must employ permanent and temporary staff for the Council, and contract for services. The Department must also contract with an independent third party to perform a Washington energy code baseline economic analysis and economic analysis of code proposals.

Meetings of the Council are subject to the requirement of the Open Public Meetings Act, which requires that meetings of public agencies be open to the public.

When adopting or amending the codes, the Council must comply with the Administrative Procedure Act. The Administrative Procedure Act regulates the process that public agencies must use to, among other things, adopt or amend administrative rules.

Summary of Bill:

The Energy Code is the minimum energy code for renovated nonresidential buildings, as well as new nonresidential buildings.

State Building and Energy Code Amendments.

The Council must adopt amendments to the Code and Energy Code on a three-year cycle. This cycle follows the model code adoption cycle. Substantive amendments to the Code or Energy Code may generally only be made once during the update cycle. The Council must review the most recent editions of the model codes and take action on adopting them within 30 months of the publication of the model code.

Following the close of a public comment period, and after any public hearing required by the Administrative Procedure Act has been held, the Council must approve or reject the final adoption of an amendment of the Code or Energy Code. The amendment may not differ substantially from the proposal that was made available for public testimony at the hearing. If the amendment does differ, the general subject of the proposal must remain the

same, and an interested party may file a petition within 60 days of the publication of the adopted amendment in order to initiate a new rulemaking cycle. Proposals that do not meet the necessary criteria for adoption may be considered again during a subsequent cycle.

The Council may initiate an interim code adoption cycle outside of the normal three-year cycle if a majority of its voting members determine that an interim cycle is needed to correct errors or omissions, or to eliminate obsolete, conflicting, redundant, or unnecessary regulations. An interim cycle cannot occur earlier than 12 months after the Council has adopted amendments to the Code, or more than 18 months after such adoption.

Emergency amendments may be made to the Code or Energy Code when necessary to preserve public health, safety, or welfare, or for consistency with state or federal laws or regulations. The Council may not take action on a petition for an emergency amendment at the meeting at which it is introduced, and such petitions must provide a concise statement of the emergency. In order to accept a petition, at least two-thirds of the Council must vote that an emergency exists. The approval of an emergency amendment requires a majority of voting members.

Any person may submit a petition for an amendment to the Code or Energy Code to the Council in writing during time periods established by the Council. The Council may require that petitions be made in a certain format and contain certain content. Incomplete petitions may not be considered. The Council must approve the referral of statewide amendments to a TAG or a standing committee of the Council.

The Council must contract with an independent third party to conduct comparative economic and energy analyses of proposed Energy Code amendments and the prior version of the Energy code.

An off-cycle amendment to the Code and Energy Code may be made at any time when directed to do so by legislation.

State Building Code Council Membership and Organization.

When determining a quorum, calling a special meeting, or meeting voting thresholds, ex officio members and vacant positions on the Council are not considered. In order to approve a proposal or action, a majority of voting members present must approve the proposal or action.

Once a councilmember's term expires, they may continue to serve on the Council for up to 90 days until the Governor appoints a replacement. If the Governor does not appoint a replacement within that timeframe, then the position becomes vacant.

The largest trade associations representing an industry must select the candidates for appointment by the Governor. Within three days of the expiration of a member's term, the

Council must post on its website that there is an open position. The largest trade associations must provide the candidates within 30 days of the Council position opening, and the Governor must appoint a replacement within 60 days. The Governor does not need to appoint a candidate selected by a trade association if fewer than three qualified candidates were nominated.

Within one year of being employed by, or appointed to, the Council, employees and members of the Council must receive training on ethics in public service. Members of TAGs must receive such training within three months of appointment.

The Department may employ a managing director of the Council, and permanent and temporary staff to perform all duties necessary to support the work of the Council.

The Council, its committees, and any TAGs it creates are subject to the Open Public Meetings Act. The Council must establish processes to allow the public to understand amendments that are being proposed. These processes must include requirements for proposals to be in writing, to include the reason for the amendment, and to be made available to the public and the Council at least one week prior to a vote on adoption. Councilmembers and members of a TAG are encouraged to make proposed amendments publicly available at least 48 hours prior to the meeting at which they will be discussed.

The Council must adopt policies and procedures for the adoption or amendment of the Code that comply with the Administrative Procedure Act.

Technical Advisory Groups.

Technical advisory groups may review petitions for amendments to the Code and Energy Code. A petition for an amendment to the Code that is referred to a TAG must be approved by a majority in order for it to be considered by the Council.

Only one member of a TAG may be a councilmember. Other members must be subject matter experts designated by the Council. A person who wishes to serve on a TAG must submit an application to the Council that satisfies the application requirements determined by the Council. An application must be approved or denied within 30 days of the closing of the period for application submittal.

A TAG member may be removed by the Council if they are no longer qualified to serve on the TAG, and a member that has missed three consecutive TAG meetings may be designated as an ex officio member until a replacement is appointed. Ex officio members are not considered when determining a quorum.

TAG members, and the industry or stakeholders they represent, must be posted on the Council's website.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) There was close collaboration with the State Building Code Council in putting this bill together. This bill is about the process the Council uses, not about the outcomes of that process. It is trying to make sure the process is open and predictable so that productive participation is possible. This will streamline and clarify the process so that people will better understand how to engage with the Council. It can be a complex and confusing process, and this will help people better understand how they can be involved. The opportunity to make mid-cycle code modifications to make sure that codes are consistent is appreciated.

(Opposed) None.

Persons Testifying: Senator Lynda Wilson, prime sponsor; Jan Himebaugh, Building Industry Association of Washington; and Carolyn Logue, Washington Air Conditioning Contractors Association and Northwest Hearth, Patio and Barbecue Association.

Persons Signed In To Testify But Not Testifying: None.