
HOUSE BILL 1404

State of Washington

68th Legislature

2023 Regular Session

By Representatives Goehner, Chapman, Corry, Jacobsen, Griffey, Rude, Couture, Christian, Cheney, Barkis, Stokesbary, and Barnard

Read first time 01/18/23. Referred to Committee on Local Government.

1 AN ACT Relating to reforming the state building code council, its
2 operations and procedures, and its statutory authority; amending RCW
3 19.27.031, 19.27.070, 19.27.074, and 19.27A.025; adding new sections
4 to chapter 19.27 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the state
7 building code council can serve as a partner in addressing our
8 state's housing shortage and the cost of building not just housing,
9 but all buildings. Recent code adoptions by the state building code
10 council have indicated a need to add transparency and consistency to
11 the council's decision-making process. If more diverse perspectives
12 are represented on the council, the impact of proposed council
13 decisions is analyzed more thoroughly and in a timely manner, and the
14 public and industry is given greater opportunities to engage, the
15 state building code council can make greater strides to making
16 building in Washington state affordable and ecologically responsible.
17 The legislature finds that it is necessary to improve the regulatory
18 process. Furthermore, the legislature finds public trust and
19 confidence in the state building code council will be enhanced by
20 eliminating conflicts of interest within the council and providing
21 more legislative oversight of council activities. With some changes

1 to facilitate a public process, collectively the members of the state
2 building code council can create a better building code, firmly based
3 in international code, address escalating housing costs, limited
4 housing availability, and increase housing choices for previously
5 eliminated groups of potential homeowners.

6 **Sec. 2.** RCW 19.27.031 and 2018 c 189 s 1 are each amended to
7 read as follows:

8 Except as otherwise provided in this chapter, there shall be in
9 effect in all counties and cities the state building code which shall
10 consist of the following codes which are hereby adopted by reference:

11 (1)(a) The International Building Code, published by the
12 International Code Council, Inc.;

13 (b) The International Residential Code, published by the
14 International Code Council, Inc.;

15 (2) The International Mechanical Code, published by the
16 International Code Council, Inc., except that the standards for
17 liquefied petroleum gas installations shall be NFPA 58 (Storage and
18 Handling of Liquefied Petroleum Gases) and ANSI Z223.1/NFPA 54
19 (National Fuel Gas Code);

20 (3) The International Fire Code, published by the International
21 Code Council, Inc., including those standards of the National Fire
22 Protection Association specifically referenced in the International
23 Fire Code: PROVIDED, That, notwithstanding any wording in this code,
24 participants in religious ceremonies shall not be precluded from
25 carrying handheld candles;

26 (4) Portions of the International Wildland Urban Interface Code,
27 published by the International Code Council Inc., as set forth in RCW
28 19.27.560;

29 (~~Except as provided in RCW 19.27.170, the~~) The Uniform
30 Plumbing Code and Uniform Plumbing Code Standards, published by the
31 International Association of Plumbing and Mechanical Officials:
32 PROVIDED, That any provisions of such code affecting sewers or fuel
33 gas piping are not adopted;

34 (6) The rules adopted by the council establishing standards for
35 making buildings and facilities accessible to and usable by
36 individuals with disabilities or elderly persons as provided in RCW
37 70.92.100 through 70.92.160; and

1 (7) The state's climate zones for building purposes are
2 designated in RCW 19.27A.020(3) and may not be changed through the
3 adoption of a model code or rule.

4 In case of conflict among the codes enumerated in subsections
5 (1), (2), (3), (4), and (5) of this section, the first named code
6 shall govern over those following.

7 The codes enumerated in this section shall be adopted by the
8 council as provided in RCW 19.27.074 and sections 6 through 11 of
9 this act. The council shall solicit input from first responders to
10 ensure that firefighter safety issues are addressed during the code
11 adoption process.

12 The council may issue opinions relating to the codes at the
13 request of a local official charged with the duty to enforce the
14 enumerated codes.

15 **Sec. 3.** RCW 19.27.070 and 2018 c 207 s 3 are each amended to
16 read as follows:

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

20 (1) The state building code council shall consist of (~~fifteen~~)
21 the following members:

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

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

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

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

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

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

35 (g) (~~Seven~~) Eight members must represent the private sector or
36 professional organizations as follows:

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

1 (ii) One member shall represent general construction,
2 specializing in residential and multifamily building construction;

3 (iii) One member shall represent the architectural design
4 profession;

5 (iv) One member shall represent the structural engineering
6 profession;

7 (v) One member shall represent the mechanical engineering
8 profession;

9 (vi) One member shall represent the construction building trades;

10 (vii) One member shall represent manufacturers, installers, or
11 suppliers of building materials and components; and

12 (viii) One member shall represent an investor-owned utility or
13 consumer-owned utility as defined in RCW 19.405.020. This member
14 should be knowledgeable of a broad range of utility functions and be
15 able to provide credible information about grid capacity, reliability
16 assessments, technical connectivity, and consumer experiences for the
17 industry.

18 (2) At least six of these (~~fifteen~~) members shall reside east
19 of the crest of the Cascade mountains.

20 (3) The council shall include: Two members of the house of
21 representatives appointed by the speaker of the house, one from each
22 caucus; two members of the senate appointed by the president of the
23 senate, one from each caucus; and an employee of the electrical
24 division of the department of labor and industries, as ex officio,
25 nonvoting members with all other privileges and rights of membership.

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

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

30 (c) Any member who is appointed by virtue of being an elected
31 official or holding public employment shall be removed from the
32 council if he or she ceases being such an elected official or holding
33 such public employment.

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

1 of the private sector, he or she has been appointed to represent,
2 then he or she must be removed from the council.

3 (e) Any member who no longer qualifies for appointment under this
4 section may not vote on council actions, but may participate as an ex
5 officio, nonvoting member until a replacement member is appointed. A
6 member must notify the council staff and the governor's office within
7 (~~thirty~~) 30 days of the date the member no longer qualifies for
8 appointment under this section. The governor shall appoint a
9 qualified replacement for the member within (~~sixty~~) 60 days of
10 notice.

11 (5) Before making any appointments to the building code council,
12 the governor shall seek nominations from recognized organizations
13 which represent the entities or interests identified in this section.
14 The governor shall select appointees to represent private sector
15 industries from a list of three nominations provided by the trade
16 associations representing the industry(~~7~~) unless no names are put
17 forth by the trade associations.

18 (6) Members shall not be compensated but shall receive
19 reimbursement for travel expenses in accordance with RCW 43.03.050
20 and 43.03.060.

21 (7) Employees of the state building code council, people serving
22 on technical advisory groups, and members of the state building code
23 council must receive training on the rules of procedure used by the
24 council and ethics in public service including, but not limited to,
25 provisions of chapter 42.52 RCW.

26 (8) The managing director of the building code council is subject
27 to confirmation by the senate.

28 (9) Individuals that are required to register pursuant to RCW
29 42.17A.600 may not serve as council members.

30 (10) For purposes of this section, a "professional organization"
31 includes an entity whose members are engaged in a particular lawful
32 vocation, occupation, or field of activity of a specialized nature,
33 including but not limited to associations, boards, educational
34 institutions, and nonprofit organizations.

35 **Sec. 4.** RCW 19.27.074 and 2018 c 207 s 4 are each amended to
36 read as follows:

37 (1) The state building code council shall:

38 (a) Adopt and maintain the codes to which reference is made in
39 RCW 19.27.031 in a status which is consistent with the state's

1 interest as set forth in RCW 19.27.020. In maintaining these codes,
2 the council shall regularly review updated versions of the codes
3 referred to in RCW 19.27.031 and other pertinent information and
4 shall amend the codes as deemed appropriate by the council;

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

8 (c) As required by the legislature and sections 6 through 11 of
9 this act, develop and adopt any codes relating to buildings; and

10 (d) Approve a proposed budget for the operation of the state
11 building code council to be submitted by the department of enterprise
12 services to the office of financial management pursuant to RCW
13 43.88.090.

14 (2) The state building code council may:

15 (a) Appoint technical advisory committees in accordance with
16 section 8 of this act which may include members of the council;

17 (b) Approve contracts for services; and

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

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

22 (a) Employ permanent and temporary staff and contract for
23 services;

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

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

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

31 (5)(a) All meetings of the state building code council, its
32 standing committees, and technical advisory groups shall be open to
33 the public under the open public meetings act, chapter 42.30 RCW. All
34 actions of the state building code council which adopt or amend any
35 code of statewide applicability shall be pursuant to the
36 administrative procedure act, chapter 34.05 RCW.

37 (b) All council decisions relating to the codes enumerated in RCW
38 19.27.031 shall require approval by at least a majority of the
39 members of the council.

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

5 **Sec. 5.** RCW 19.27A.025 and 2019 c 285 s 17 are each amended to
6 read as follows:

7 (1) The minimum state energy code for new nonresidential
8 buildings shall be the Washington state energy code, 1986 edition, as
9 amended. The state building code council may, by rule adopted
10 pursuant to chapter 34.05 RCW and sections 6 through 11 of this act,
11 amend that code's requirements for new nonresidential buildings
12 provided that:

13 (a) Such amendments increase the energy efficiency of typical
14 newly constructed nonresidential buildings; and

15 (b) Any new measures, standards, or requirements adopted must be
16 technically feasible, commercially available, and developed to yield
17 the lowest overall cost to the building owner and occupant while
18 meeting the energy reduction goals established under RCW 19.27A.160.

19 (2) In considering amendments to the state energy code for
20 nonresidential buildings, the state building code council shall
21 establish and consult with a technical advisory committee in
22 accordance with section 8 of this act including representatives of
23 appropriate state agencies, local governments, general contractors,
24 building owners and managers, design professionals, utilities, and
25 other interested and affected parties.

26 (3) Decisions to amend the Washington state energy code for new
27 nonresidential buildings shall be made prior to December 15th of any
28 year and shall not take effect before the end of the regular
29 legislative session in the next year. Any disputed provisions within
30 an amendment presented to the legislature shall be approved by the
31 legislature before going into effect. A disputed provision is one
32 which was adopted by the state building code council with less than a
33 two-thirds majority vote. Substantial amendments to the code shall be
34 adopted no more frequently than every three years.

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

37 (1) The state building code council's process to regularly review
38 updated versions of the building codes enumerated in RCW 19.27.031

1 and the state energy code under RCW 19.27A.020 and adoption of
2 statewide and emergency amendments to those codes shall be done in
3 accordance with this section.

4 (2) A petition for statewide or emergency amendment must be
5 submitted in compliance with the format required by the state
6 building code council.

7 (3) The state building code council or the director must remove
8 from consideration any petition for statewide or emergency amendment
9 that:

10 (a) Does not include all the requested information or does not
11 have sufficient detail to be acted upon as of the deadline
12 established by the building code council for submission of such
13 petitions; or

14 (b) Requests a rule modification that exceeds the specific
15 delegation of authority provided by the legislature. In performing
16 its duties under this subsection (3)(b), the state building code
17 council may not rely solely on the broad delegation of authority in
18 RCW 19.27.074 or 19.27A.020.

19 (4) Once a petition for statewide amendment that is submitted as
20 part of the review to update the building codes enumerated in RCW
21 19.27.031 and the state energy code under RCW 19.27A.020 is accepted
22 as complete, a member of the state building code council must agree
23 to sponsor the amendment in order for the amendment to move forward
24 through the process. A statewide amendment may not be referred to a
25 standing committee or technical advisory group without a
26 councilmember sponsor.

27 (5) Once a councilmember sponsors a proposed statewide amendment,
28 the proposed text of the rule change must be put in written format
29 consistent with the format required by the office of the code reviser
30 for final rules and RCW 34.05.395.

31 (6) The state building code council, its standing committees, and
32 technical advisory committees must have a process of consideration
33 that allows people to understand what textual changes are being
34 proposed and adopted during the consideration process. Modifications
35 of proposed rule text must be in writing, specify the legal authority
36 for the amendment, and be available to all councilmembers and the
37 members of the public before a vote is taken on the modification.
38 Verbally negotiating amendments with text projected or posted on a
39 screen during the meeting immediately prior to a vote does not
40 satisfy this requirement.

1 (7) The state building code council must adopt policies to ensure
2 that the rule-making requirements in chapter 34.05 RCW are abided by
3 during its rule-making process.

4 NEW SECTION. **Sec. 7.** A new section is added to chapter 19.27
5 RCW to read as follows:

6 (1) The state building code council should supplement cost
7 estimate information that is provided in a petition for statewide
8 amendment with independent research if there is a concern that the
9 provided information is not sufficient, it inaccurately represents
10 the actual impacts or costs, or the assertions in the petition are
11 questioned by experts with knowledge of the industry or
12 circumstances.

13 (2) At least two weeks prior to final adoption by the building
14 code council of nonemergency changes to the Washington Administrative
15 Code must post on the agency website and make available for public
16 comment:

17 (a) The small business economic impact statement as required by
18 chapter 19.85 RCW;

19 (b) The cost-benefit analysis and supporting information for
20 members to determine the proposed rule is the least burdensome
21 alternative for those required to comply with it and that the
22 probable benefits of the rule are greater than its probable costs as
23 required by chapter 34.05 RCW;

24 (c) Any independent, third-party analysis performed in accordance
25 with RCW 19.27.074(3)(b);

26 (d) Any supplemental cost estimate information and industry
27 specific information provided about the proposal; and

28 (e) Any findings, determinations or recommendations of the state
29 building code council's economic impact work group, consultants, or
30 employees.

31 (3)(a) If a person working in an industry subject to regulation
32 under a proposed rule raises an economic or cost-related protest
33 during consideration of a rule or provides cost or economic analysis
34 that is different than provided by other sources, the members of the
35 state building code council must be made aware of the information.

36 (b) A person that provides information in (a) of this subsection
37 may request that the state building code council provide a
38 substantive response to raised concerns, including an explanation of

1 incorporated provisions in the proposed rule that address, mitigate,
2 or reduce the expected cost or economic impacts of the proposed rule.

3 (4) The information required in this section should be available
4 for review and vetted by building code council members prior to the
5 final vote adopting any rule modification. The economic and cost
6 information is provided in advance so that the building code council
7 can take action to address, mitigate, or even eliminate identified
8 economic impacts.

9 NEW SECTION. **Sec. 8.** A new section is added to chapter 19.27
10 RCW to read as follows:

11 (1) If the state building code council appoints a technical
12 advisory group to be consulted regarding proposed code changes
13 authorized in chapters 19.27 and 19.27A RCW, the process must be done
14 in accordance with the provisions in this section.

15 (a) The technical advisory group includes subject matter experts
16 and members representing interested parties. Any person appointed to
17 serve as an expert or representative of a particular interest or
18 group must have the qualifications or characteristics for the
19 specific position.

20 (b) If a technical advisory group member represents a specific
21 interest or group, any person of that group may petition the building
22 code council to have a person removed from the technical advisory
23 group on grounds that the person does not have the qualifications or
24 characteristics necessary to represent the interest or group. The
25 building code council must remove any technical advisory group member
26 it finds lacks the characteristics and qualifications necessary to
27 fill the position.

28 (2) The state building code council must post the name of each
29 technical advisory group member, the industry or interest group the
30 person represents, and must provide a way to contact each person.

31 (3) Each technical advisory group is subject to the same
32 procedures and process as the state building code council.

33 (4) Each technical advisory group member must have training on
34 the state building code council's procedure and ethics policies.

35 (5) Any application for appointment to serve on a technical
36 advisory group must be approved or denied within 30 days of the
37 council receiving the application.

38 (6) If a petition for a statewide amendment receives less than a
39 majority vote by a technical advisory group, the proposed amendment

1 will be tabled from further consideration. A councilmember may make a
2 motion before the full council to continue consideration of that
3 statewide amendment.

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 19.27
5 RCW to read as follows:

6 The state building code council must identify the sources of
7 information reviewed and relied upon in the course of adopting
8 changes to the Washington Administrative Code and include such
9 information in the official rule-making file. The state building code
10 must post on its website the materials that the state building code
11 council considered or relied upon during the process. This
12 information must remain publicly available on the website at least
13 until one year after the effective date of any changed rule.

14 NEW SECTION. **Sec. 10.** A new section is added to chapter 19.27
15 RCW to read as follows:

16 The state building code council must create a distribution list
17 of state agency personnel to be notified by email of the compilation
18 of proposed statewide amendments that constitutes the update of the
19 building and energy codes. The notification must include a copy, or
20 electronic links, or website directions, of the proposed rule, small
21 business economic impact statement, and any additional posted
22 economic analysis related to the proposed changes, and the dates and
23 times for public comment. The distribution list must include the
24 governor's office, the state fire marshal, the capital projects
25 advisory review board, the department of commerce, and other
26 government agencies that will be impacted by the proposed rules. The
27 notification must be sent prior to public hearings on the proposed
28 rules. The state building code council must include individuals that
29 are involved in providing state subsidized housing on the list if the
30 changes impact housing. This contact is to notify the agency that the
31 proposed rule will increase the cost and complexity of building
32 construction and identify when public comment will be taken at a
33 specific date, time, and location. If a proposal changes the design
34 of school buildings, the office of the superintendent of public
35 instruction must be notified.

36 NEW SECTION. **Sec. 11.** A new section is added to chapter 19.27
37 RCW to read as follows:

1 After the state building code council has filed with the code
2 reviser's office the adopted permanent rule of comprehensive changes
3 to Title 51 RCW of the Washington Administrative Code that occurs
4 every three years, it must submit a report to the legislature
5 identifying provisions that generated conflict, and summarize the
6 different perspectives brought before the state building code council
7 related to the conflict, and how the state building code council
8 addressed that conflict. This report is to be submitted no later than
9 the second Monday in January following the date of filing the
10 permanent rule with the code reviser's office.

11 NEW SECTION. **Sec. 12.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

--- END ---