

SENATE BILL REPORT

ESSB 5804

As Passed Senate, March 6, 2015

Title: An act relating to the procedure for adoption and amendment of the Washington state energy code.

Brief Description: Modifying the procedure for adoption and amendment of the Washington state energy code.

Sponsors: Senate Committee on Government Operations & Security (originally sponsored by Senators Lias, Benton, Hasegawa, Dammeier and Angel).

Brief History:

Committee Activity: Government Operations & Security: 2/09/15, 2/17/15 [DPS].
Passed Senate: 3/06/15, 48-1.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & SECURITY

Majority Report: That Substitute Senate Bill No. 5804 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Pearson, Vice Chair; Lias, Ranking Minority Member; Habib and McCoy.

Staff: Karen Epps (786-7424)

Background: State Building Code (Code). The State Building Code Council (Council) was established in 1974 to provide analysis and advice to the Legislature and the Office of the Governor on Code issues. The Council establishes the minimum building, mechanical, fire, plumbing, and energy code requirements in Washington by reviewing, developing, and adopting the Code. The Code sets forth requirements through the provision of building codes to promote the health, safety, and welfare of the occupants or users of buildings and structures throughout the state. The Council reviews, updates, and adopts a new Code every three years.

State Energy Code. The Code also includes the Washington State Energy Code (Energy Code), which is a state-written, state-specific code. The Energy Code provides a minimum level of energy efficiency, but allows flexibility in building design, construction, and heating equipment efficiencies. The Council must adopt state energy codes that require buildings constructed from 2013 through 2031 to move incrementally toward a 70-percent reduction in

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energy use by 2031. The Energy Code must consider regional climatic conditions. The Council may amend the Energy Code by rule if the amendments increase energy efficiency in the affected buildings. Substantial amendments to the Energy Code cannot be adopted more frequently than every three years.

The Administrative Procedure Act (APA). The APA establishes the general procedures for agency rulemaking and adjudicatory proceedings. The APA details requirements that must be satisfied in order for an agency to adopt a significant legislative rule. Significant legislative rules do not include emergency rules, procedural rules, interpretative rules, or rules adopted through expedited rulemaking.

The Regulatory Fairness Act (RFA). Under the RFA, an agency must develop a small business economic impact statement (SBEIS) if a rule it is adopting under the APA will impose more than minor costs on businesses in an industry, or if an agency is requested to do so by the Joint Administrative Rules Review Committee of the Legislature. If an SBEIS shows that a rule will have a disproportionate impact on small businesses, businesses with 50 or fewer employees, the agency must, where legal and feasible, reduce the costs imposed by the rule on small businesses. The SBEIS must list the steps taken to reduce the costs on small businesses or a reasonable justification for not doing so.

Summary of Engrossed Substitute Bill: State Energy Code. The Energy Code for residential and nonresidential buildings is the 2012 Washington State Energy Code, as published by the International Code Council, Inc. and as amended by rule by the council.

Any new measures, standards, or requirements adopted as amendments to the Energy Code must be based upon an analysis, comments from owners and tenants, as well as stakeholders, and conclusions by the Council on whether amendments increase the energy efficiency of typical newly constructed nonresidential buildings, and are technically feasible, commercially available, and cost effective. The Council must determine the technological, economic, and process factors of each update and determine whether action beyond reporting its findings is necessary. Substantial amendments to the Energy Code for nonresidential buildings may not be adopted more frequently than every three years.

Amendments to the Energy Code for residential buildings may be adopted if the amendments: increase the energy efficiency of typical, newly constructed residential buildings; maintain and promote a competitive business climate; and are technically feasible, commercially available, and cost effective to owners and tenants. Decisions to amend the Energy Code for new residential buildings must be made prior to December 15 of any year and cannot take effect before the end of the regular legislative session of the following year. Substantial amendments to the Energy Code for residential buildings may not be adopted more frequently than every three years. In considering amendments to the Energy Code for residential buildings, the Council must establish and consult with a technical advisory committee that includes the following:

- representatives of appropriate state agencies;
- local governments;
- general contractors;
- building owners and managers;
- design professionals;

- utilities;
- manufacturers; and
- other interested parties.

Beginning with the development of the 2018 Energy Code, the Council must endeavor to reduce the number of amendments processed by the Council. Stakeholders are encouraged but not required to take concepts and ideas as well as proposed amendments through the International Code Council's model energy code update process.

Any person may propose an amendment to the Energy Code after the Council files a statement of inquiry in accordance with the APA. The proponent of a proposed amendment must indicate the amount of energy efficiency gained due to the proposed amendment and provide cost-benefit data. The proposal must specifically address whether it will increase or decrease the cost of construction and this information must be considered by the Council. Additionally, any proposal submitted that does not include the requisite cost information and percent of energy efficiency gained may not be considered by the Council.

The Council must work with stakeholders in developing a multitier process, as appropriate, for the review of amendments. Only complete amendments may move forward for the Council's review of substantial amendments to the Code. Incomplete amendments and ideas or concepts must be reviewed separately from the review of substantial amendments to the Code. The Council may only take final action on amendments that have been fully vetted by a technical advisory group or specifically included on the notice for the public hearing.

The Council, prior to filing notice of a proposed rule under the APA, must evaluate all proposed amendments for their technical feasibility and cost effectiveness according to national consensus standards. The purpose of the evaluation is to assess the impact of proposed amendments to the Energy Code.

The Council must work with stakeholders to evaluate various consensus economic methodologies for evaluating the cost-benefit impact of substantial amendments to the Code and the Energy Code. The Council, based on work with stakeholders, must select an economic methodology to evaluate the impact of the package of proposals selected for review to be included as substantial amendments to the Code.

Administrative Procedure Act. Amendments to the Energy Code, adopted by rule, for residential or nonresidential buildings constitute significant legislative rules.

The Regulatory Fairness Act. The Council must adopt rules consistent with the RFA. The Council must evaluate impacts of adopting the Energy Code on small businesses and reduce the disproportionate costs imposed on small businesses.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: This bill is designed to look at the input that goes into developing the Energy Code. With the right input, updating more regularly will be positive for the state and will move the state in the right direction. This bill focuses on the process of adopting the Energy Code. This bill is about giving guidance to the Council about adopting the Energy Code and embracing the different stakeholders who are involved in the process. This bill is designed to address some of the frustrations felt by stakeholders in the 2009 and 2012 update process. This bill captures what the Council's process is because the statute does not currently describe what their process is, especially with residential buildings. This bill is about restoring stakeholder confidence and putting into statute what the Council has been doing. This bill is also trying to create parity between the nonresidential and the residential. This bill is trying to put framework around the 70 percent goal in order to embrace innovative technology. The process that the Council uses to update the Code works, but it is in need of improvement. There are amendments that come into the Council that are incomplete and without the vital information of cost analysis and benefit, the Technical Advisory Group struggles to review the proposals. This bill establishes a clear policy as to procedure.

CON: There are concerns about the bill as drafted. There is concern that these process changes would introduce inadvertent difficulties in continuing to have a strong Energy Code. There are concepts that are taken from the nonresidential side and put into the residential side and that could have unintended consequences. It is important to make sure that the process is fair and balanced. Some of the requirements in the bill may not be feasible for everyone and it is important to make sure that the process works for everyone so that good ideas can come forward and be considered. While appreciative of considering the cost effectiveness of proposals, this bill goes too far and would make Washington more of a follower of the International Code Council rather than a leader in energy efficiency. Being a leader in energy efficiency is very important in meeting the requirement around energy efficiency goals and climate goals. There are concerns with the seven-year payback period and it may be too short. This bill does nothing to provide additional resources to the Council to this work. The Council needs more resources in order to do this work.

OTHER: During the previous two cycles of updates, there were concerns about the process and how the amendments were adopted. The Council submitted a report to the Legislature in 2012 that contains information that would address how the process works, what the issues are, and what the measures are that the Council is looking at when updating the Code. The process is the bill will work for the Council. The Council has worked with the stakeholders to address concerns about how the Council considers new amendments to the Energy Code.

Persons Testifying: PRO: Senator Lias, prime sponsor; Kraig Stevenson, International Code Council; Jeanette McKague, WA Assn. of Realtors; Gary Allsup, city of Lacey.

CON: Carl Schroeder, Assn. of WA Cities; JJ McCoy, NW Energy Coalition.

OTHER: Timothy Nogler, State Building Code Council; Larry Stevens, Mechanical Contractors Assn.