S-3366.1

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**SENATE BILL 5772**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators L. Wilson, Braun, MacEwen, Rivers, Dozier, Boehnke, Schoesler, Torres, McCune, Fortunato, Wagoner, Gildon, Padden, Short, King, Warnick, Muzzall, Holy, Hawkins, and J. Wilson

AN ACT Relating to requiring the state building code council to amend the state energy code to comply with the energy policy and conservation act; amending RCW 19.27A.025, 19.27A.045, and 19.27A.160; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec.**  On April 17, 2023, the United States court of appeals for the ninth circuit published its opinion in *California Restaurant Association v. City of Berkeley*, holding that the energy policy and conservation act expressly preempts state regulations concerning the energy use of many natural gas appliances, including building codes that regulate the use of natural gas in buildings. The legislature finds that Washington's new state energy code, adopted by the state building code council and scheduled to take effect in 2023, must be reevaluated in light of the *California Restaurant Association* opinion, and amended to comply with the interpretation of the energy policy and conservation act set forth in that opinion. Moreover, the legislature finds that it has delayed the effective date of new energy codes for the specific purpose of ensuring that the legislature has an opportunity to review the new codes and require the state building code council to adjust them as necessary.

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

(1) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 1986 edition, as amended. The state building code council may, by rule adopted pursuant to chapter 34.05 RCW, amend that code's requirements for new nonresidential buildings provided that:

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

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

(2) In considering amendments to the state energy code for nonresidential buildings, the state building code council shall establish and consult with a technical advisory committee including representatives of appropriate state agencies, local governments, general contractors, building owners and managers, design professionals, utilities, and other interested and affected parties.

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

(4) Notwithstanding subsection (3) of this section, the state energy code for new nonresidential buildings scheduled to take effect in 2023 may not take effect until the state building code council amends the code to conform with the energy policy and conservation act as interpreted in the April 17, 2023, published opinion in *California Restaurant Association v. City of Berkeley*, case no. 21-16278 (9th Cir. 2023).

**Sec.**  RCW 19.27A.045 and 1990 c 2 s 5 are each amended to read as follows:

(1) The state building code council shall maintain the state energy code for residential structures in a status which is consistent with the state's interest as set forth in section 1, chapter 2, Laws of 1990. In maintaining the Washington state energy code for residential structures, beginning in 1996 the council shall review the Washington state energy code every three years. After January 1, 1996, by rule adopted pursuant to chapter 34.05 RCW, the council may amend any provisions of the Washington state energy code to increase the energy efficiency of newly constructed residential buildings. Decisions to amend the Washington state energy code for residential structures shall be made prior to December 1st of any year and shall not take effect before the end of the regular legislative session in the next year.

(2) Notwithstanding subsection (1) of this section, the state energy code for residential structures scheduled to take effect in 2023 shall not take effect until the state building code council amends the code to conform with the energy policy and conservation act as interpreted in the April 17, 2023, published opinion in *California Restaurant Association v. City of Berkeley*, case no. 21-16278 (9th Cir. 2023).

**Sec.**  RCW 19.27A.160 and 2009 c 423 s 5 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, residential and nonresidential construction permitted under the 2031 state energy code must achieve a ((~~seventy~~)) 70 percent reduction in annual net energy consumption, using the adopted 2006 Washington state energy code as a baseline.

(2) The council shall adopt state energy codes from 2013 through 2031 that incrementally move towards achieving the ((~~seventy~~)) 70 percent reduction in annual net energy consumption as specified in subsection (1) of this section. The council shall report its progress by December 31, 2012, and every three years thereafter. If the council determines that economic, technological, or process factors would significantly impede adoption of or compliance with this subsection, the council may defer the implementation of the proposed energy code update and shall report its findings to the legislature by December 31st of the year prior to the year in which those codes would otherwise be enacted. The council shall delay the effective dates of the state energy code scheduled to take effect in 2023 pursuant to the schedule set forth in RCW 19.27A.025(4) and 19.27A.045(2).

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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