

WSR 14-06-027
EXPEDITED RULES
BUILDING CODE COUNCIL

[Filed February 25, 2014, 1:21 p.m.]

Title of Rule and Other Identifying Information: Recodifying chapter 365-110 WAC, State Building Code—Building permit surcharge and fees, to chapter 51-05 WAC and updating references.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Ray Allshouse, Chair, State Building Code Council, P.O. Box 41449, Olympia, WA 98504-1449, AND RECEIVED BY May 6, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Makes editorial changes to the WAC and recodify to a new WAC number.

The state building code council was previously housed within the department of commerce, and the definition of "building permit" for the purposes of collecting the surcharge under RCW 19.27.085 was originally adopted into commerce's chapter of the WAC, Title 365 WAC. Upon subsequent relocations of the building code council, it was determined that this definition should fall under the council's chapter [title] of the WAC, Title 51 WAC. In addition, the model codes referenced in the WAC are obsolete and needed to be updated.

Reasons Supporting Proposal: Chapter 271, Laws of 2010, moved the state building code council from the department of commerce to the department of general administration. Subsequent chapter 43, Laws of 2011, moved the program to the department of enterprise services. Rules necessary for the operation of the state building code council are no longer appropriate to be adopted under the authority of the department of commerce in chapter 365-110 WAC.

Statutory Authority for Adoption: RCW 19.27A.025, 19.27A.045.

Statute Being Implemented: Chapters 19.27, 19.27A, and 34.05 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: State building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Krista Braaksma, P.O. Box 41449, Olympia, WA 98504-1449, (360) 407-9278; and Enforcement: Local jurisdictions.

February 25, 2014
C. Ray Allshouse
Council Chair

AMENDATORY SECTION (Amending WSR 99-01-089, filed 12/16/98, effective 1/16/99)

WAC 365-110-035 Definitions. 1. (~~Department shall mean the department of community, trade, and economic development.~~

2.) **State Building Code fee** shall mean a fee which is required to be collected by cities and counties pursuant to chapter 19.27 RCW. Funds collected shall be used exclusively to implement the provisions of chapters 19.27 and 19.27A RCW.

(~~3-)~~ 2. **Building permit** shall mean a permit issued by a city or a county to construct, enlarge, alter, repair, move, (~~improve, remove, convert or~~) demolish, or change the occupancy of any building or structure regulated by the ((Uniform)) International Building Code as set forth in the ((Uniform)) International Building Code, section ((106-1)) 105.1 or by the International Residential Code as set forth in the International Residential Code, section R105.1. This definition shall be subject to the exemptions contained in section (~~106-2~~) 105.2 of the ((Uniform)) International Building Code and section R105.2 of the International Residential Code. Building permits shall not include plumbing, electrical, mechanical permits, or permits issued pursuant to the (~~Uniform~~) International Fire Code.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
365-110-020	51-05-100
365-110-035	51-05-200

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 365-110-010 Authority.

WSR 14-06-099
EXPEDITED RULES
DEPARTMENT OF
ENTERPRISE SERVICES

[Filed March 5, 2014, 7:40 a.m.]

Title of Rule and Other Identifying Information: WAC 200-320-006 If state employees will not be displaced and 200-320-010 Definitions.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT

LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jack Zeigler, Department of Enterprise Services, 1500 Jefferson Street S.E., Olympia, WA 98504-1401, AND RECEIVED BY May 5, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to repeal WAC 200-320-006 and amend WAC 200-320-010.

In regard to the repeal of WAC 200-320-006 and amendment of WAC 200-320-010, agencies must apply the text of RCW 41.06.142 (1)(b) to their specific situation to determine if they have "employees in the classified service whose positions or work would be displaced by the contract." If so, agencies must follow the competitive contracting requirements.

Reasons Supporting Proposal: This rule making is necessary to comply with a court decision that invalidates WAC 236-51-006 (recodified as WAC 200-320-006) and WAC 236-51-010(11) (recodified as WAC 200-320-010(11)). See *Wash Fed'n of State Empl. v. Wash Dep't of Gen. Admin.*, 152 Wn. App. 368, 216 p.3d 1061 (Div. 2, 2009).

Statutory Authority for Adoption: RCW 41.06.142 (4)(d).

Statute Being Implemented: RCW 41.06.142.

Rule is necessary because of state court decision, 37897-3-II.

Name of Proponent: Department of enterprise services, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jack Zeigler, 1500 Jefferson Street S.E., Olympia, WA, (360) 407-9209; and Enforcement: Ferrell Presnell, 1500 Jefferson Street S.E., Olympia, WA, (360) 407-8820.

March 3, 2014

Jack Zeigler
Rules and Policy Manager

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 200-320-006 If state employees will not be displaced

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-320-010 Definitions. The following words, terms, and phrases, used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Agency" means an office, department, board, commission, institution of higher education, or other separate unit or division, however designated, of the state government and all personnel thereof; it includes any unit of state government established by law, the executive officer or members of which are either elected or appointed, upon which the statutes

confer powers and impose duties in connection with operations of either a governmental or proprietary nature.

(2) "Appeal" means both a request for an adjudicative proceeding or the actual adjudicative proceeding presided over by an administrative law judge from the office of administrative hearings in accordance with chapter 34.05 RCW.

(3) "Award" means to grant a contract to a successful bidder or bidders, which occurs on the date as specified in the award notice.

(4) "Bid" means a written offer to perform services by contract in response to a solicitation.

(5) "Bidder" means a party who submits a bid or proposal for consideration by an agency issuing a solicitation.

(6) "Competitive contracting" means the process by which classified employees compete with businesses, individuals, nonprofit organizations, or other entities for the performance of services those employees have customarily and historically performed.

(7) "Complainant" means bidder or potential bidder who files a complaint about the bidding process to the agency head or designee on allowable grounds.

(8) "Conflict of interest" means having a personal or financial interest that is in conflict with the proper discharge of state duties, including the transaction of state business with an entity or individual in which a state employee has an interest.

(9) "Date of award" means the date on which the agency and the successful bidder sign the contract.

(10) "Day," whether calendar or business day, means 8:00 a.m. to 5:00 p.m. Pacific Standard Time or Pacific Daylight Time, whichever is in effect. Business day excludes weekends and state holidays. Calendar day is every day including weekends and state holidays. If the end of a period calculated using calendar days falls on a weekend or state holiday, it will be extended to 5:00 p.m. of the next business day.

~~((11) "Displaced employee" means a classified employee whose position or work would be eliminated, resulting in the employee being laid off or assigned to a different job classification, as a result of an award via the competitive contracting process.))~~

(12) "Efficiency improvement" means the enhanced value and/or quality that an agency achieves as a result of a change to a service or the ways a service is provided. This enhancement may come at a higher cost but its relative value offsets it. Such improvements may include, but are not limited to:

- (a) Reduced preparation or process time;
- (b) Greater accessibility or availability of service; or
- (c) Improved data quality and timeliness.

(13) "Employee business unit" means a group of employees who perform services for which an agency proposes to competitively contract and who:

(a) Notify the agency of their intent to submit a bid for the performance of those services through competitive contracting; or

(b) Receive award of a contract from the agency as a result of being the successful bidder.

(14) "Employee business unit leader" means a member of the employee business unit chosen and granted authority

by the other employee business unit members to represent the interests of the employee business unit in the bid process.

(15) "Employee notice" means the notice the agency is required to provide in RCW 41.06.142 (4)(a), "At least ninety calendar days prior to the date the contracting agency requests bids from private entities for a contract for services provided by classified employees, the contracting agency shall notify the classified employees whose positions or work would be displaced by the contract."

(16) "Fully allocated costs" means those costs associated with a service, including the cost of employees' salaries and benefits, space, equipment, materials, and other costs necessary to perform the service but does not include the state or agency's indirect overhead costs unless those costs can be attributed directly to the function in question and would not exist if that function were not performed by the state.

(17) "In writing" means written communication from one party to another including, but not limited to, electronic means.

(18) "Indirect costs" means state or agency costs linked to services which may not be assigned directly. Indirect costs include various administrative and support activities provided to a service by other units from within the agency or by other state government entities. These indirect costs are generally assigned to a service through cost allocation methods.

(19) "Notice of intent to award" means a written announcement of the apparent awardee(s) and the expected date of award.

(20) "Performance work statement" means a statement of the technical, functional and performance characteristics or requirements of the work to be performed. The statement identifies essential functions to be performed, determines performance factors, including the location of the work, the units of work, the quantity of work units, and the quality and timeliness of the work units.

(21) "Potential bidder" means a business, individual, nonprofit organization, employee business unit, or other entity capable of providing the services being considered for competitive contracting.

(22) "Quality assurance plan" means a plan by which an agency will monitor a contract awardee's performance to ensure that the standards of the performance work statement are met within the costs, quality of service, delivery, and other standards of the contract.

(23) "Resource plan" means a detailed written plan created by potentially displaced employees or the employee business unit and submitted to the agency for approval of the use of state resources including, but not limited to: State funds, facilities, tools, property, employees and their time requested for:

(a) Potentially displaced employees to prepare an alternative within the sixty calendar day window, as described in RCW 41.06.142 (4)(a), using state resources other than those offered by an agency; or

(b) The employee business unit to prepare its bid.

(24) "Responsible bidder" means a bidder who has the capability in all respects to perform in full the contract requirements and meet the elements of responsibility. In determining the "lowest responsible bidder," in addition to cost, the following elements shall be given consideration:

(a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(c) Whether the bidder can perform the contract within the time specified;

(d) The quality of performance of previous contracts or services;

(e) The previous and existing compliance by the bidder with laws relating to the contract or services; and

(f) Such other information as may be secured having a bearing on the decision to award the contract.

(25) "Sealed bid" means a bid that is submitted in a manner to prevent its contents from being revealed or known before the deadline for submission of all bids.

(26) "Solicitation" means the process of notifying potential bidders that the agency desires to receive competitive bids or proposals for furnishing services. This includes references to the actual document used in that process, such as the bid or request for proposal and any amendments to such documents.

(27) "State employee" or "employee" mean an employee in the classified service subject to the provisions of chapter 41.06 RCW.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.