
SECOND SUBSTITUTE HOUSE BILL 1622

State of Washington

65th Legislature

2018 Regular Session

By House Appropriations (originally sponsored by Representatives Senn, Springer, Tharinger, Ormsby, and Fey)

1 AN ACT Relating to the state building code council; amending RCW
2 19.27.015, 19.27.035, 19.27.070, 19.27.074, 19.27.085, 19.27A.020,
3 and 18.08.240; reenacting and amending RCW 34.05.328; adding a new
4 section to chapter 19.27 RCW; and adding a new section to chapter
5 18.08 RCW.

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

7 **Sec. 1.** RCW 19.27.015 and 2009 c 362 s 2 are each amended to
8 read as follows:

9 As used in this chapter:

10 (1) "Agricultural structure" means a structure designed and
11 constructed to house farm implements, hay, grain, poultry, livestock,
12 or other horticultural products. This structure may not be a place of
13 human habitation or a place of employment where agricultural products
14 are processed, treated, or packaged, nor may it be a place used by
15 the public((+)).

16 (2) "City" means a city or town((+)).

17 (3) "Commercial building permit" means a building permit issued
18 by a city or a county to construct, enlarge, alter, repair, move,
19 demolish, or change the occupancy of any building not covered by a
20 residential building permit.

1 (4) "Multifamily residential building" means common wall
2 residential buildings that consist of four or fewer units, that do
3 not exceed two stories in height, that are less than five thousand
4 square feet in area, and that have a one-hour fire-resistive
5 occupancy separation between units(~~(; and)~~).

6 (~~(4)~~) (5) "Residential building permit" means a building permit
7 issued by a city or a county to construct, enlarge, alter, repair,
8 move, demolish, or change the occupancy of any building containing
9 only dwelling units used for independent living of one or more
10 persons including permanent provisions for living, sleeping, eating,
11 cooking, and sanitation, and structures accessory to dwelling units,
12 such as detached garages and storage buildings.

13 (6) "Temporary growing structure" means a structure that has the
14 sides and roof covered with polyethylene, polyvinyl, or similar
15 flexible synthetic material and is used to provide plants with either
16 frost protection or increased heat retention.

17 **Sec. 2.** RCW 19.27.035 and 1989 c 266 s 6 are each amended to
18 read as follows:

19 The building code council shall(~~(, within one year of July 23,~~
20 ~~1989)~~):

21 (1) By July 1, 2019, adopt a revised process for the review of
22 proposed statewide amendments to the codes enumerated in RCW
23 19.27.031(~~(;)~~); and

24 (2) Adopt a process for the review of proposed or enacted local
25 amendments to the codes enumerated in RCW 19.27.031 as amended and
26 adopted by the state building code council.

27 **Sec. 3.** RCW 19.27.070 and 2011 1st sp.s. c 43 s 244 are each
28 amended to read as follows:

29 There is hereby established in the department of enterprise
30 services a state building code council, to be appointed by the
31 governor.

32 (1) The state building code council shall consist of fifteen
33 members:

34 (a) Two members must be county elected legislative body members
35 or elected executives;

36 (b) Two members must be city elected legislative body members or
37 mayors;

1 (c) One member must be a local government building code
2 enforcement official;

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

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

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

10 (g) Seven members must represent the private sector or
11 professional organizations as follows:

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

14 ~~((f))~~ (ii) One member shall represent general construction,
15 specializing in residential and multifamily building construction;

16 ~~((g))~~ (iii) One member shall represent the architectural design
17 profession;

18 ~~((h))~~ (iv) One member shall represent the structural
19 engineering profession;

20 ~~((i))~~ (v) One member shall represent the mechanical engineering
21 profession;

22 ~~((j))~~ (vi) One member shall represent the construction building
23 trades;

24 ~~((k))~~ (vii) One member shall represent manufacturers,
25 installers, or suppliers of building materials and components(

26 ~~(l) One member must be a person with a physical disability and~~
27 ~~shall represent the disability community; and~~

28 ~~(m) One member shall represent the general public)).~~

29 (2) At least six of these fifteen members shall reside east of
30 the crest of the Cascade mountains.

31 (3) The council shall include: Two members of the house of
32 representatives appointed by the speaker of the house, one from each
33 caucus; two members of the senate appointed by the president of the
34 senate, one from each caucus; and an employee of the electrical
35 division of the department of labor and industries, as ex officio,
36 nonvoting members with all other privileges and rights of membership.

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

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

1 (c) Any member who is appointed by virtue of being an elected
2 official or holding public employment shall be removed from the
3 council if he or she ceases being such an elected official or holding
4 such public employment.

5 (d)(i) Any member who is appointed to represent a specific
6 private sector industry must maintain sufficiently similar employment
7 or circumstances throughout the term of office to remain qualified to
8 represent the specified industry. Retirement or unemployment is not
9 cause for termination. However, if a councilmember enters into
10 employment outside of the industry he or she has been appointed to
11 represent, then he or she shall be removed from the council.

12 (ii) Any member who is appointed after the effective date of this
13 section to represent a specific private sector industry must maintain
14 sufficiently similar private sector employment or circumstances
15 throughout the term of office to remain qualified to represent the
16 specified industry. Retirement or unemployment is not cause for
17 termination. However, if a councilmember appointed after the
18 effective date of this section to represent a specific private sector
19 industry enters into employment outside of the industry, or outside
20 of the private sector, he or she has been appointed to represent,
21 then he or she must be removed from the council.

22 (e) Any member who no longer qualifies for appointment under this
23 section may not vote on council actions, but may participate as an ex
24 officio, nonvoting member until a replacement member is appointed. A
25 member must notify the council staff and the governor's office within
26 thirty days of the date the member no longer qualifies for
27 appointment under this section. The governor shall appoint a
28 qualified replacement for the member within sixty days of notice.

29 (5) Before making any appointments to the building code council,
30 the governor shall seek nominations from recognized organizations
31 which represent the entities or interests identified in this section.
32 The governor shall select appointees to represent private sector
33 industries from a list of three nominations provided by the largest
34 trade association representing the industry, unless no names are put
35 forth by the trade association.

36 (6) Members shall not be compensated but shall receive
37 reimbursement for travel expenses in accordance with RCW 43.03.050
38 and 43.03.060.

39 ~~(7) ((The department of enterprise services shall provide~~
40 ~~administrative and clerical assistance to the building code~~

1 ~~council.~~) For purposes of this section, a "professional
2 organization" includes an entity whose members are engaged in a
3 particular lawful vocation, occupation, or field of activity of a
4 specialized nature, including but not limited to associations,
5 boards, educational institutions, and nonprofit organizations.

6 **Sec. 4.** RCW 19.27.074 and 1989 c 266 s 3 are each amended to
7 read as follows:

8 (1) The state building code council shall:

9 (a) Adopt and maintain the codes to which reference is made in
10 RCW 19.27.031 in a status which is consistent with the state's
11 interest as set forth in RCW 19.27.020. In maintaining these codes,
12 the council shall regularly review updated versions of the codes
13 referred to in RCW 19.27.031 and other pertinent information and
14 shall amend the codes as deemed appropriate by the council;

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

18 (c) As required by the legislature, develop and adopt any codes
19 relating to buildings; and

20 (d) ~~((Propose a))~~ Approve a proposed budget for the operation of
21 the state building code council to be submitted by the department of
22 enterprise services to the office of financial management pursuant to
23 RCW 43.88.090.

24 (2) The state building code council may:

25 (a) Appoint technical advisory committees which may include
26 members of the council;

27 (b) ~~((Employ permanent and temporary staff and))~~ Approve
28 contracts for services; and

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

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

33 (a) Employ permanent and temporary staff and contract for
34 services;

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

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

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

3 (5)(a) All meetings of the state building code council shall be
4 open to the public under the open public meetings act, chapter 42.30
5 RCW. All actions of the state building code council which adopt or
6 amend any code of statewide applicability shall be pursuant to the
7 administrative procedure act, chapter 34.05 RCW.

8 (b) All council decisions relating to the codes enumerated in RCW
9 19.27.031 shall require approval by at least a majority of the
10 members of the council.

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

15 **Sec. 5.** RCW 19.27.085 and 1989 c 256 s 1 are each amended to
16 read as follows:

17 (1) There is hereby created the building code council account in
18 the state treasury. Moneys deposited into the account shall be used
19 by the building code council, after appropriation, to perform the
20 purposes of the council.

21 (2) All moneys collected under subsection (3) of this section
22 shall be deposited into the building code council account. Every four
23 years the state treasurer shall report to the legislature on the
24 balances in the account so that the legislature may adjust the
25 charges imposed under subsection (3) of this section.

26 (3) There is imposed a fee of (~~four~~) six dollars and fifty
27 cents on each residential building permit and a fee of twenty-five
28 dollars for each commercial building permit, issued by a county or a
29 city, plus an additional surcharge of two dollars for each
30 residential unit, but not including the first unit, on each building
31 containing more than one residential unit. Quarterly each county and
32 city shall remit moneys collected under this section to the state
33 treasury; however, no remittance is required until a minimum of fifty
34 dollars has accumulated pursuant to this subsection.

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

37 The building code council in consultation with the office of the
38 chief information officer shall assess the costs and benefits of the

1 potential acquisition and implementation of open public access
2 information technologies to enhance the council's code adoption
3 process and report back to the appropriate committees of the
4 legislature by November 15, 2018.

5 **Sec. 7.** RCW 19.27A.020 and 2015 c 11 s 3 are each amended to
6 read as follows:

7 (1) The state building code council in the department of
8 enterprise services shall adopt rules to be known as the Washington
9 state energy code as part of the state building code.

10 (2) The council shall follow the legislature's standards set
11 forth in this section to adopt rules to be known as the Washington
12 state energy code. The Washington state energy code shall be designed
13 to:

14 (a) Construct increasingly energy efficient homes and buildings
15 that help achieve the broader goal of building zero fossil-fuel
16 greenhouse gas emission homes and buildings by the year 2031;

17 (b) Require new buildings to meet a certain level of energy
18 efficiency, but allow flexibility in building design, construction,
19 and heating equipment efficiencies within that framework; and

20 (c) Allow space heating equipment efficiency to offset or
21 substitute for building envelope thermal performance.

22 (3) The Washington state energy code shall take into account
23 regional climatic conditions. One climate zone includes: Adams,
24 Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield,
25 Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille,
26 Skamania, Spokane, Stevens, Walla Walla, Whitman, and Yakima
27 counties. The other climate zone includes all other counties not
28 listed in this subsection (3). The assignment of a county to a
29 climate zone may not be changed by adoption of a model code or rule.
30 Nothing in this section prohibits the council from adopting the same
31 rules or standards for each climate zone.

32 (4) The Washington state energy code for residential buildings
33 shall be the 2006 edition of the Washington state energy code, or as
34 amended by rule by the council.

35 (5) The minimum state energy code for new nonresidential
36 buildings shall be the Washington state energy code, 2006 edition, or
37 as amended by the council by rule.

38 (6)(a) Except as provided in (b) of this subsection, the
39 Washington state energy code for residential structures shall preempt

1 the residential energy code of each city, town, and county in the
2 state of Washington.

3 (b) The state energy code for residential structures does not
4 preempt a city, town, or county's energy code for residential
5 structures which exceeds the requirements of the state energy code
6 and which was adopted by the city, town, or county prior to March 1,
7 1990. Such cities, towns, or counties may not subsequently amend
8 their energy code for residential structures to exceed the
9 requirements adopted prior to March 1, 1990.

10 (7) The state building code council shall consult with the
11 department of enterprise services as provided in RCW 34.05.310 prior
12 to publication of proposed rules. The director of the department of
13 enterprise services shall recommend to the state building code
14 council any changes necessary to conform the proposed rules to the
15 requirements of this section.

16 (8) The state building code council shall evaluate and consider
17 adoption of the international energy conservation code in Washington
18 state in place of the existing state energy code.

19 (9) The definitions in RCW 19.27A.140 apply throughout this
20 section.

21 **Sec. 8.** RCW 34.05.328 and 2011 c 298 s 21 and 2011 c 149 s 1 are
22 each reenacted and amended to read as follows:

23 (1) Before adopting a rule described in subsection (5) of this
24 section, an agency must:

25 (a) Clearly state in detail the general goals and specific
26 objectives of the statute that the rule implements;

27 (b) Determine that the rule is needed to achieve the general
28 goals and specific objectives stated under (a) of this subsection,
29 and analyze alternatives to rule making and the consequences of not
30 adopting the rule;

31 (c) Provide notification in the notice of proposed rule making
32 under RCW 34.05.320 that a preliminary cost-benefit analysis is
33 available. The preliminary cost-benefit analysis must fulfill the
34 requirements of the cost-benefit analysis under (d) of this
35 subsection. If the agency files a supplemental notice under RCW
36 34.05.340, the supplemental notice must include notification that a
37 revised preliminary cost-benefit analysis is available. A final cost-
38 benefit analysis must be available when the rule is adopted under RCW
39 34.05.360;

1 (d) Determine that the probable benefits of the rule are greater
2 than its probable costs, taking into account both the qualitative and
3 quantitative benefits and costs and the specific directives of the
4 statute being implemented;

5 (e) Determine, after considering alternative versions of the rule
6 and the analysis required under (b), (c), and (d) of this subsection,
7 that the rule being adopted is the least burdensome alternative for
8 those required to comply with it that will achieve the general goals
9 and specific objectives stated under (a) of this subsection;

10 (f) Determine that the rule does not require those to whom it
11 applies to take an action that violates requirements of another
12 federal or state law;

13 (g) Determine that the rule does not impose more stringent
14 performance requirements on private entities than on public entities
15 unless required to do so by federal or state law;

16 (h) Determine if the rule differs from any federal regulation or
17 statute applicable to the same activity or subject matter and, if so,
18 determine that the difference is justified by the following:

19 (i) A state statute that explicitly allows the agency to differ
20 from federal standards; or

21 (ii) Substantial evidence that the difference is necessary to
22 achieve the general goals and specific objectives stated under (a) of
23 this subsection; and

24 (i) Coordinate the rule, to the maximum extent practicable, with
25 other federal, state, and local laws applicable to the same activity
26 or subject matter.

27 (2) In making its determinations pursuant to subsection (1)(b)
28 through (h) of this section, the agency must place in the rule-making
29 file documentation of sufficient quantity and quality so as to
30 persuade a reasonable person that the determinations are justified.

31 (3) Before adopting rules described in subsection (5) of this
32 section, an agency must place in the rule-making file a rule
33 implementation plan for rules filed under each adopting order. The
34 plan must describe how the agency intends to:

35 (a) Implement and enforce the rule, including a description of
36 the resources the agency intends to use;

37 (b) Inform and educate affected persons about the rule;

38 (c) Promote and assist voluntary compliance; and

39 (d) Evaluate whether the rule achieves the purpose for which it
40 was adopted, including, to the maximum extent practicable, the use of

1 interim milestones to assess progress and the use of objectively
2 measurable outcomes.

3 (4) After adopting a rule described in subsection (5) of this
4 section regulating the same activity or subject matter as another
5 provision of federal or state law, an agency must do all of the
6 following:

7 (a) Coordinate implementation and enforcement of the rule with
8 the other federal and state entities regulating the same activity or
9 subject matter by making every effort to do one or more of the
10 following:

11 (i) Deferring to the other entity;

12 (ii) Designating a lead agency; or

13 (iii) Entering into an agreement with the other entities
14 specifying how the agency and entities will coordinate implementation
15 and enforcement.

16 If the agency is unable to comply with this subsection (4)(a),
17 the agency must report to the legislature pursuant to (b) of this
18 subsection;

19 (b) Report to the joint administrative rules review committee:

20 (i) The existence of any overlap or duplication of other federal
21 or state laws, any differences from federal law, and any known
22 overlap, duplication, or conflict with local laws; and

23 (ii) Make recommendations for any legislation that may be
24 necessary to eliminate or mitigate any adverse effects of such
25 overlap, duplication, or difference.

26 (5)(a) Except as provided in (b) of this subsection, this section
27 applies to:

28 (i) Significant legislative rules of the departments of ecology,
29 labor and industries, health, revenue, social and health services,
30 and natural resources, the employment security department, the forest
31 practices board, the office of the insurance commissioner, the state
32 building code council, and to the legislative rules of the department
33 of fish and wildlife implementing chapter 77.55 RCW; and

34 (ii) Any rule of any agency, if this section is voluntarily made
35 applicable to the rule by the agency, or is made applicable to the
36 rule by a majority vote of the joint administrative rules review
37 committee within forty-five days of receiving the notice of proposed
38 rule making under RCW 34.05.320.

39 (b) This section does not apply to:

40 (i) Emergency rules adopted under RCW 34.05.350;

1 (ii) Rules relating only to internal governmental operations that
2 are not subject to violation by a nongovernment party;

3 (iii) Rules adopting or incorporating by reference without
4 material change federal statutes or regulations, Washington state
5 statutes, rules of other Washington state agencies, shoreline master
6 programs other than those programs governing shorelines of statewide
7 significance, or, as referenced by Washington state law, national
8 consensus codes that generally establish industry standards, if the
9 material adopted or incorporated regulates the same subject matter
10 and conduct as the adopting or incorporating rule;

11 (iv) Rules that only correct typographical errors, make address
12 or name changes, or clarify language of a rule without changing its
13 effect;

14 (v) Rules the content of which is explicitly and specifically
15 dictated by statute;

16 (vi) Rules that set or adjust fees under the authority of RCW
17 19.02.075 or that set or adjust fees or rates pursuant to legislative
18 standards, including fees set or adjusted under the authority of RCW
19 19.80.045;

20 (vii) Rules of the department of social and health services
21 relating only to client medical or financial eligibility and rules
22 concerning liability for care of dependents; or

23 (viii) Rules of the department of revenue that adopt a uniform
24 expiration date for reseller permits as authorized in RCW 82.32.780
25 and 82.32.783.

26 (c) For purposes of this subsection:

27 (i) A "procedural rule" is a rule that adopts, amends, or repeals
28 (A) any procedure, practice, or requirement relating to any agency
29 hearings; (B) any filing or related process requirement for making
30 application to an agency for a license or permit; or (C) any policy
31 statement pertaining to the consistent internal operations of an
32 agency.

33 (ii) An "interpretive rule" is a rule, the violation of which
34 does not subject a person to a penalty or sanction, that sets forth
35 the agency's interpretation of statutory provisions it administers.

36 (iii) A "significant legislative rule" is a rule other than a
37 procedural or interpretive rule that (A) adopts substantive
38 provisions of law pursuant to delegated legislative authority, the
39 violation of which subjects a violator of such rule to a penalty or
40 sanction; (B) establishes, alters, or revokes any qualification or

1 standard for the issuance, suspension, or revocation of a license or
2 permit; or (C) adopts a new, or makes significant amendments to, a
3 policy or regulatory program.

4 (d) In the notice of proposed rule making under RCW 34.05.320, an
5 agency must state whether this section applies to the proposed rule
6 pursuant to (a)(i) of this subsection, or if the agency will apply
7 this section voluntarily.

8 (6) By January 31, 1996, and by January 31st of each even-
9 numbered year thereafter, the office of regulatory assistance, after
10 consulting with state agencies, counties, and cities, and business,
11 labor, and environmental organizations, must report to the governor
12 and the legislature regarding the effects of this section on the
13 regulatory system in this state. The report must document:

14 (a) The rules proposed to which this section applied and to the
15 extent possible, how compliance with this section affected the
16 substance of the rule, if any, that the agency ultimately adopted;

17 (b) The costs incurred by state agencies in complying with this
18 section;

19 (c) Any legal action maintained based upon the alleged failure of
20 any agency to comply with this section, the costs to the state of
21 such action, and the result;

22 (d) The extent to which this section has adversely affected the
23 capacity of agencies to fulfill their legislatively prescribed
24 mission;

25 (e) The extent to which this section has improved the
26 acceptability of state rules to those regulated; and

27 (f) Any other information considered by the office of financial
28 management to be useful in evaluating the effect of this section.

29 **Sec. 9.** RCW 18.08.240 and 1991 sp.s. c 13 s 2 are each amended
30 to read as follows:

31 There is established in the state treasury the architects'
32 license account, into which all fees paid pursuant to this chapter
33 shall be paid, except as provided in section 10 of this act.

34 NEW SECTION. **Sec. 10.** A new section is added to chapter 18.08
35 RCW to read as follows:

36 (1) There is imposed a fee of six dollars and fifty cents on each
37 certificate of registration, renewal of a certificate of
38 registration, certificate of authorization, and renewal of a

1 certificate of authorization, issued by the director. The director
2 must collect this fee and must quarterly remit moneys collected under
3 this subsection to the state treasury.

4 (2) The fee established by subsection (1) of this section is in
5 addition to other fees authorized by this chapter and prescribed by
6 the director under RCW 43.24.086.

7 (3) All moneys collected under subsection (1) of this section
8 must be deposited into the building code council account in the state
9 treasury.

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